

SEPARATION OF SUBSIDY FROM AIR-MAIL PAY

JULY 2, 1952.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PRIEST, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 436]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 436) to provide for the separation of subsidy from air-mail pay, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof a new text to read as follows:

That this Act may be cited as the "Air Mail Subsidy Separation Act of 1952".

SEC. 2. (a) Section 406 of the Civil Aeronautics Act of 1938 is amended to read as follows:

"PAYMENTS FOR TRANSPORTATION OF MAIL AND FOR ESSENTIAL AIR TRANSPORTATION

"Rates For The Air Transportation Of Mail Between Points In The United States

"SEC. 406. (a) (1) Each air carrier holding a certificate authorizing the transportation of mail by aircraft shall be paid for transportation of mail in air transportation between points in the United States on schedules designated or ordered to be established by the Postmaster General pursuant to section 405 (e) at a rate or rates established under paragraph (2) of this subsection. Such payment shall be considered to include payment for transportation of mail by an air carrier by other means than aircraft whenever transportation by such other means is incidental to such transportation of mail in air transportation or is made necessary by conditions of emergency arising from aircraft operation. In the computation of such payment the mileage used shall be the airport to airport mileage, as established by the Board in such mail schedules, and the weight of each mail dispatch to each point to which mail is dispatched shall be considered to be, as a minimum, not less than 15 pounds. Such payments shall be made by the Postmaster General from funds appropriated for the transportation of mail by aircraft, and he shall

not delay mail or withhold mail from an air carrier because the rate for the transportation of mail payable to such carrier may be higher than the rate payable to a competing air carrier

"(2) The Board is empowered and directed to determine and fix from time to time, after due notice and opportunity for hearing, rates of compensation which, under honest, economical, and efficient management, are fair and reasonable, for the transportation of mail in air transportation between points in the United States, the facilities used and useful for such transportation of mail, and the services connected therewith; to prescribe the method or methods by weight or space, or both, or otherwise, for ascertaining such rates of compensation; and to publish the orders establishing such rates of compensation. Orders so made and published in proceedings under this paragraph shall continue in force until changed by the Board after due notice and opportunity for hearing. The Board may fix different rates for different air carriers or classes of air carriers, or different classes of service, or on the basis of any other reasonable classification of carriers, services, routes and route segments, or any combination thereof. A proceeding under this paragraph may be begun upon the Board's own initiative, upon petition of the Postmaster General, or upon petition of an air carrier with respect to the rate received by it. An order entered under this paragraph may be made effective as of any date, determined by the Board to be proper, which is (A) on or after the effective date of this amendatory paragraph, and (B) on or after the date on which the proceeding was commenced.

"Recommendations as to Rates

"(b) (1) Any petition for the determination or revision of rates under subsection (a) of this section shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under subsection (a) of this section a comprehensive statement of all service to be required of the air carrier and such other information in his possession as he deems, or as may be deemed by the Board, to be material to the inquiry.

"(2) The Postmaster General is authorized to request the Board to obtain from any carrier certificated for the transportation of mail, information necessary for the performance of his duties with respect to the initiation of and participation in mail rate proceedings under subsection (a) of this section.

"(3) The burden of proof in any proceeding under subsection (a) of this section which is initiated by petition shall be with the petitioner.

"Rates for Foreign Air Transportation of Mail

"(c) (1) Each air carrier holding a certificate authorizing the transportation of mail by aircraft shall be paid for the foreign air transportation of mail on schedules designated or ordered to be established by the Postmaster General pursuant to section 405 (e) at a rate or rates established under paragraph (2) of this subsection. Such payment shall be considered to include payment for transportation of mail by an air carrier by other means than aircraft whenever transportation by such other means is incidental to foreign air transportation of mail or is made necessary by conditions of emergency arising from aircraft operation. Such payments shall be made by the Postmaster General from funds appropriated for the transportation of mail by aircraft, and he shall not delay mail or withhold mail from an air carrier because the rate for the transportation of mail payable to such carrier may be higher than the rate payable to a competing air carrier or an air carrier engaged in the transportation of mail in overseas air transportation.

"(2) The Board is empowered and directed to determine and fix from time to time, after due notice and opportunity for hearing, rates of compensation which, under honest, economical, and efficient management, are fair and reasonable, for the foreign air transportation of mail, the facilities used and useful for such foreign air transportation of mail, and the services connected therewith; and to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation: *Provided*, That the rate fixed under this paragraph for the foreign air transportation of mail by an air carrier shall not be less than any rate paid by the United States to a foreign air carrier for similar service. The Board shall publish the orders establishing the rates of compensation to be paid under this subsection, and such orders shall continue in force until changed by the Board after due notice and opportunity for hearing. The Board, considering the conditions peculiar to foreign air transportation and to the particular air carrier or class of air

carriers, may fix different rates for different air carriers or classes of air carriers, or different classes of service, or on the basis of any other reasonable classification of carriers, services, routes and route segments, or any combination thereof. A proceeding under this paragraph may be begun upon the Board's own initiative, upon petition of the Postmaster General, or upon petition of an air carrier with respect to the rate received by it. An order entered under this paragraph may be made effective as of any date, determined by the Board to be proper, which is (A) on or after the effective date of this amendatory paragraph, and (B) on or after the date on which the proceeding was commenced.

"Payments To Foreign Air Carriers

“(d) In any case where air transportation is performed between the United States and any foreign country, both by aircraft owned or operated by one or more air carriers holding a certificate under this title and by aircraft owned or operated by one or more foreign air carriers, the Postmaster General shall not pay to or for the account of any such foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country, which, in his opinion, will result (over such reasonable period as the Postmaster General may determine, taking account of exchange fluctuations and other factors) in such foreign air carrier receiving a higher rate of compensation for transporting such mail than such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and the United States, or receiving a higher rate of compensation for transporting such mail than a rate determined by the Postmaster General to be comparable to the rate such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and an intermediate country on the route of such air carrier between such foreign country and the United States.

"Weighing Of Mail

“(e) The Postmaster General may weigh the mail transported by aircraft and make such computations for statistical and administrative purposes as may be required in the interest of the mail service. The Postmaster General is authorized to employ such clerical and other assistance as may be required in connection with proceedings under this Act. If the Board shall determine that it is necessary or advisable, in order to carry out the provisions of this Act, to have additional and more frequent weighing of the mails, the Postmaster General, upon request of the Board, shall provide therefor in like manner, but such weighing need not be for continuous periods of more than thirty days.

"Subsidy Payments For Essential Air Transportation

“(f) (1) For the purpose of encouraging the development of an air transport system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the postal service, and of the national defense, the Board is empowered, upon petition of any air carrier holding a certificate authorizing the transportation of mail in air transportation, after due notice and opportunity for hearing, to enter into a contract or contracts on behalf of the United States with such air carrier to make payments in such amounts as are necessary to enable such air carrier, under honest, economical, and efficient management, to effect such purpose. Such contract shall provide that such payments will be made to such carrier over any period not exceeding five years in the case of payments made to effect such purpose in foreign air transportation and not exceeding three years in the case of payments made to effect such purpose in interstate or overseas air transportation if such carrier (A) continues to furnish such air transportation, and (B) agrees to repay to the United States that part of the payments received by it under this paragraph which, when added to the net profits of the carrier from such air transportation for such period (computed without regard to capital gains and capital losses and after deduction of all applicable taxes and reasonable charges for depreciation, obsolescence, and amortization), exceeds the amount of payments under this paragraph which the Board finds to be necessary in order to assure such carrier a fair return during such period on that portion of its total investment which is used and useful in such air transportation. Any such repayment by an air carrier shall be made to the Treasurer of the United States, and shall be credited to appropriations made available for the purposes of this subsection. Any such contract may be amended by the Board from time to time after due notice and opportunity for hearing if the Board finds that by reason of changes in circumstances the pay-

ments provided in such contract are excessive or inadequate. Payments by the Board under this subsection shall be made out of funds appropriated to the Board for this purpose. Each petition filed under this subsection shall state in detail the amount of payments the petitioner needs in order to effect the purpose of this subsection, and the petitioner shall have the burden of proving such need.

"(2) In determining whether any payments should be made to a carrier under this subsection, and the amount of such payments, the fact that such a carrier holds a certificate of public convenience and necessity authorizing it to conduct certain services shall not be deemed conclusive of the issue as to whether any such service is sufficiently required for the purposes of this subsection to justify the amount of payments that would be required under this subsection to enable such carrier to continue such service. In any proceeding in which any such issue is raised, the Board shall give notice to interested parties (including communities in the United States receiving such service) and permit such parties to be heard. If the Board shall determine that the need for such service does not justify the amount of payment that would be required under this subsection to continue it, its final order denying such payment shall be accompanied by an order authorizing such carrier either to suspend or abandon such service as the carrier may elect, at any time within one year from the date of such order.

"(3) During the pendency of proceedings to determine the amount of payment to any air carrier under this subsection, the Board is authorized, with or without hearing, to make an advance, out of funds appropriated for the purpose of this subsection, to such carrier upon a showing that the need for such an advance is essential and urgent. Before receiving such an advance such carrier shall be required to agree to repay within a reasonable time such advance, or any part thereof, which exceeds the payment, if any, to such carrier finally determined by the Board under this subsection. Such repayments shall be made to the Treasurer of the United States and shall be credited to appropriations made available for the purpose of this subsection.

"(4) The Board shall, by written notice to the air carrier, terminate any payments under this subsection upon finding, after due notice and opportunity for hearing, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by such air carrier or its agent or representative to any officer or employee of the Government with a view toward securing favorable treatment under any provisions of this Act."

(b) The amendment made by this section shall become effective on July 1, 1953.

SEC. 3. Subsection (d) of section 401 of the Civil Aeronautics Act of 1938 is amended by striking the period at the end of paragraph (1) thereof and inserting in lieu thereof a colon and the following: "Provided, That no certificate authorizing the transportation of mail only shall be issued, nor shall such a certificate be amended to authorize the extension of mail service to additional areas, without the approval of the Postmaster General."

SEC. 4. Section 416 (a) of the Civil Aeronautics Act of 1938 is amended to read as follows:

"Classification

"SEC. 416. (a) The Board shall classify the air carriers which will receive payments under section 406 (a) of this Act into such classes as may be required for the purposes of such subsection, under standards established by the Board on the basis of types of communities served, services rendered, and route patterns: *Provided*, That in the case of any air carrier which is authorized by certificate to transport mail in both interstate and overseas air transportation, the Board may, for the purposes of such subsection, classify the interstate and overseas services of such carrier in different classes if, in the judgment of the Board, such classification is warranted by differences in operating conditions and costs. The Board shall, after due notice and opportunity for hearing, reclassify such carrier for the purpose of such subsection at any time a change in conditions warrants such reclassification, and any such carrier may petition for such a reclassification. The Board also may from time to time establish such other just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules, and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the Board finds necessary in the public interest."

SEC. 5. The second sentence of section 206 of the Civil Aeronautics Act of 1938 is hereby amended by inserting after "civil aeronautics" a comma and the following: "including data relative to payments of compensation for the trans-

portation of mail and subsidy payments, both in the aggregate and on an individual basis, made under this Act, with a reference to the appropriate decisions of the Board in order that the bases of each such mail payment and each such subsidy payment can be readily determined".

SEC. 6. Such appropriations as are necessary to carry out the provisions of this Act are hereby authorized to be made.

PURPOSE OF THE LEGISLATION

The committee amendment amends section 406 of the Civil Aeronautics Act of 1938, for the primary purpose of requiring the Civil Aeronautics Board to determine separately, for eligible air carriers, the amount to be paid by the Federal Government (1) for the service of transporting the mail, and (2) for subsidy to those carriers that need subsidy to enable them to contribute to the development of a sound air transport system. Payments for the transportation of mail will be made out of funds appropriated to the Postmaster General for that purpose, while payments for subsidy will be made out of funds appropriated to the Board for that purpose. These changes, separating subsidy from air-mail pay, will apply with respect to all mail transported by air carriers on and after July 1, 1953, and with respect to all subsidy payments to air carriers for periods beginning on and after such date.

The committee amendment also amends the 1938 act so as (1) to provide that no certificate which authorizes the transportation by air of mail only may be issued, or amended to extend mail service to additional areas, without the approval of the Postmaster General; (2) to provide more detailed standards and procedures for classifying the air carriers which will receive air-mail pay for the transportation of mail between points in the United States under the amended section 406, and (3) to require the Board to include additional information with respect to mail and subsidy payments in its annual report to the Congress.

THE SITUATION UNDER EXISTING LAW

Section 406 of the Civil Aeronautics Act now directs the Civil Aeronautics Board to fix rates for the transportation of mail by air, the rates so fixed being paid by the Postmaster General. In fixing such rates under the law as now in effect, however, the Board is instructed to take into consideration, among other factors, the contribution of air carriers to the maintenance and development of a sound air-transportation system which will promote the commerce of the United States, the postal service, and the national defense. To the extent that subsidy may be necessary to enable carriers to make that contribution, subsidy is to be granted. The Board has accordingly established air-mail rates which, in many cases, include both the compensation to which the carrier is entitled for transporting the mail and the subsidy needed by the carrier to accomplish the broad purposes of the Civil Aeronautics Act. The two elements have always been combined in a single rate, with the result that the amount or proportion of the rate represented by either element has not been known. Indeed, in a recent mail rate proceeding before the Board involving the "Big Four" carriers (American, Eastern, TWA, and United), where there was placed in issue the question of whether a subsidy should be paid

to any of these carriers, and if so, the amount of such subsidy, two of carriers seriously questioned the authority of the Board to fix anything except a single rate covering subsidy as well as mail pay.

The unique provision in the Civil Aeronautics Act is to be found in section 406 (b). After enumerating specific factors that should be considered in determining rates for the transportation of mail, subsection (b) goes on to direct the Civil Aeronautics Board to consider also—

the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the postal service, and the national defense.

This quoted "need" provision has meant that where a carrier has been unable, after honest, economical, and efficient management, to earn a fair return on the operations found by the Board to be required for the development of a sound air transportation system to serve national objectives, air-mail pay has been used to raise its total revenues to the point where it would have such a return.

No other existing public utility legislation has come to the attention of this committee which lumps a compensatory rate and subsidy in a manner similar to the way it is done in the Civil Aeronautics Act. Prior to 1936, steamship lines were subsidized through the mechanism of mail payments, but this system was replaced by the direct operating and construction subsidies provided by the Merchant Marine Act of 1936. The Interstate Commerce Commission fixes only the fair compensation for the services rendered by the railroads in carrying the mail, which compensation is paid by the Post Office Department.

Although there is no requirement that the Board decide how much of a particular rate is in payment for the service of transporting mail and how much is for the effort and expense of developing the desired transportation system, the Board has made considerable progress administratively toward the separation of air-mail pay from subsidy and has eliminated the subsidy element altogether in the case of carriers which are found to have become self-sufficient. At the present time, out of the 15 domestic trunk-line carriers, 8 are operating without air-mail subsidy; the 4 largest (American, Eastern, TWA, United) are receiving 45 cents per ton-mile and the other 4 (Capital, National, Western, Braniff) are receiving 53 cents per ton-mile. Approximately 90 percent of all air-mail transportation in the United States is now being performed by airlines which receive no air-mail subsidy.

The development of our air-transportation system under section 406 of the Civil Aeronautics Act has been remarkable. The air-transport capacity of our carriers available for domestic air transportation has increased from approximately 195,000,000 available ton-miles in 1938 to approximately 2,900,000,000 available ton-miles in 1951. The number of route-miles in international service has increased from about 27,000 to almost 240,000. The number of revenue passengers carried has increased from approximately 270,000 to over 2,000,000. Our international carriers predominate on all the major trade routes of the world. Domestic and international mail service provided by the carriers has increased in these 14 years from about 20,000,000 ton-miles annually to 86,000,000 ton-miles, while the cost to the Post

Office Department has been cut approximately in half notwithstanding increases in price levels and the introduction into the system of many new carriers whose rates are relatively high. The contributions of our air-transport system to the national defense, especially during World War II, in the Berlin airlift, and in the Korean war, are well known, and only recently the airlines entered into agreements to modify over 300 of their four-engined aircraft so that they can be converted on 48 hours' notice for use in military operations in time of emergency. Thus the military agencies can count upon the immediate availability of approximately \$260,000,000 worth of aircraft which, if owned and operated at full capacity by the Military Air Transport Service, would cost the taxpayers \$900,000 per day or \$350,000,000 per year. Of at least equal importance to the national defense are the skilled employees available to operate the aircraft.

PURPOSES THAT SEPARATION WILL SERVE

In recommending separation of subsidy from air-mail pay, the committee does not intend to indicate that subsidy in the field of aviation was or is improper. On the contrary, it has made possible the development of this industry to the point where much of it is now able to stand on its own feet without subsidy, and improvement continues. This bill does not eliminate subsidy, but merely makes it possible to know how much subsidy there is. In the 14 years since the passage of the Civil Aeronautics Act, and particularly in the 6-year period since the close of the war, the industry has experienced tremendous physical expansion. Many new carriers and routes have been certificated, many new points are being served, aircraft are larger and faster, there has been a tremendous growth in passenger and cargo traffic. We have now entered a period when it is essential to appraise carefully what has been done and what remains to be done. A determination of the amount of subsidy in the total compensation to air carriers is a prerequisite to such an appraisal. The separation of subsidy from mail pay should also benefit the carriers by ridding them of the accusation of being the recipients of a "hidden subsidy," with all its unfavorable implications.

SUPPORT FOR SEPARATION

For the past several years there has been increasing agitation for legislation which would require the Civil Aeronautics Board to separate and identify the subsidy element and the compensation element in air-mail rates. The Appropriations Committees of both Houses of Congress have felt the need for such a separation in connection with their work. Concern over the mounting deficits of the Post Office Department has directed attention to the fact that air-line subsidies contribute to such deficits. Government agencies, including the Department of Commerce, the Post Office Department, and the Civil Aeronautics Board, have endorsed separation. The entire airline industry supports the principle of separation. This committee has held hearings on proposals relating to this subject on more than one occasion, and it has sought and obtained much valuable information from all reasonably available sources. The great preponderance of opinion favors separation.

In his 1951 budget message to the Congress (H. Doc. No. 405), the President of the United States stated (pp. M70-71):

* * * At present, direct financial assistance to the airlines is provided through air-mail payments, which are set generally at levels adequate to cover deficiencies in the carriers' commercial revenues. Subsidy is thus merged with the fair compensation for carrying mail, making it difficult to evaluate the cost of this aid in relation to its benefits. The recent rise in total air-mail payments—to an estimated level of about \$125,000,000 in 1950—has made it increasingly important that the subsidy element be separately identified. I recommend, therefore, the immediate enactment of legislation to authorize the separation of funds payments from mail compensation. Such subsidies should be paid from funds appropriated to the Civil Aeronautics Board specifically for that purpose. * * *

The Hoover Commission's report on the Post Office Department, issued February 17, 1949, contains the following recommendation with respect to the separation of subsidy (p. 17):

We recommend, however, that the amounts of these subsidies should be paid to the Post Office by open appropriation from tax funds and not imposed upon the Post Office or the mail users in this hidden manner.

By such a course, the President, the Congress, and the public may know what the amounts of the subsidies are.

A report of the House Post Office and Civil Service Committee, Eightieth Congress, second session (Rept. No. 1958), made the following recommendation (p. 4):

It is the recommendation of the committee that the subsidy element in air-mail pay be separated. It has been suggested that this could be arrived at by accounting procedures in the Post Office Department. However, this procedure would not eliminate the basic objection which is that, under the present situation, we have an administrative board allocating public funds through which basic public policies are established without action directly by the Congress. The better solution is to make provisions for subsidies directly to the Civil Aeronautics Board.

In response to growing demands, subsidy separation bills were introduced in the Eightieth and Eighty-first Congresses. Early in 1950 hearings were held before a subcommittee of this committee, and a bill (H. R. 9184) was favorably reported. That bill passed the House on December 11, 1950, with a number of amendments, but the Senate took no action on it before the close of that Congress.

In the meantime, the Senate had also been actively considering the problem. In the Eighty-first Congress the Senate Committee on Interstate and Foreign Commerce conducted an extensive investigation, giving special attention to the amount of subsidy being provided to airlines and the justification for the subsidy. Shortly after the beginning of the present Congress, the Senate committee initiated a comprehensive study of the separation problem, utilizing the expert services of three private firms to supplement the efforts of its own staff. Lengthy hearings were held on the various subsidy-separation bills then pending before that committee. As a result of its exhaustive investigations, the Senate committee reported out S. 436 which, with amendments, was passed by the Senate on September 19, 1951.

After the Senate bill was referred to this committee, additional hearings were held. As a result, this committee has been able to supplement the studies made by the Senate committee with the most current and complete information available on conditions and needs in the air-transportation industry.

THE "FAIR AND REASONABLE" STANDARD FOR MAIL RATES

The committee amendment accomplishes the separation of subsidy from air-mail pay by amending section 406 of the Civil Aeronautics Act of 1938 so that subsections (a) and (b) provide for the fixing of fair and reasonable rates for domestic air transportation of mail and subsection (c) provides for the fixing of similar rates (except where those rates would be lower than the rates paid to foreign carriers for similar service) for the foreign air transportation of mail, while subsection (f) provides for the payment of subsidy for essential aircraft operation by carriers certificated to transport mail.

Section 406 (a), which provides for the establishment of rates of compensation for interstate and overseas air transportation of mail, directs the Board—

to determine and fix from time to time, after due notice and opportunity for hearing, rates of compensation which, under honest, economical, and efficient management, are fair and reasonable, for the transportation of mail in air transportation between points in the United States, the facilities used and useful for such transportation of mail, and the services connected therewith.

This standard, which provides for the establishment of fair and reasonable compensatory rates for the transportation of mail by air, is patterned after the corresponding rate standard contained in the Railway Mail Pay Act of 1916 (39 U. S. C., sec. 542) and is similar to the rate standard followed by most other regulatory agencies concerned with the fixing of transportation rates. The Railway Mail Pay Act provides as follows:

The Interstate Commerce Commission is hereby empowered and directed to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of such mail matter by railway common carriers and the service connected therewith, prescribing the method or methods by weight, or space, or both, or otherwise, for ascertaining such rate or compensation, and to publish the same, and orders so made and published shall continue in force until changed by the Commission after due notice and hearing.

Under that act the Commission hears the evidence and arguments which are presented to it by the railroads and the Postmaster General, and on the basis of this evidence determines the fair and reasonable rates.

The Senate bill establishes a cost-plus-fair-return standard to be used by the Board as a basis in fixing compensatory rates for the transportation of mail by air, and many of the other bills which have been considered by this committee would have provided for a cost standard in one form or another. A system of rates based upon cost alone would be an innovation in Federal law. The cost standard is not found in the provisions of existing law providing for the establishment of rates for the transportation of mail by rail or water, and the committee has been unable to discover any other provision of law which requires the application of such a standard in fixing transportation or public rates. It is the feeling of the committee that the experience of the Interstate Commerce Commission and other regulatory bodies concerned with rate fixing clearly indicates the desirability of adhering in this bill to the "fair and reasonable" rate standard, which is the standard most widely used, most thoroughly understood, and most effectively administered by the rate-making agencies.

The committee feels that the rates established under the committee amendment as fair and reasonable should not be required to be determined on the basis of cost alone, but rather should be determined by the exercise of judgment based on experience, after consideration of the various interrelated factors which are deemed to be pertinent. Costs will, of course, play a large part in the determination of what rates are fair and reasonable. The Interstate Commerce Commission, in fixing railroad mail rates, relies heavily on cost studies which are prepared not only by its staff but also by the two contending parties. However, it does not rely entirely on costs, but takes into account other elements which, in its judgment, bear upon the fairness and reasonableness of the rate to be determined. In a recent decision the Commission stated very briefly the elements to be taken into account, as follows:

Such costs serve only as a starting point in the determination of just and reasonable rates. Other factors developed in the record have been given consideration, such as the trend of wages and prices, the changes in operating techniques in the railway industry, the ability of the various segments of the passenger-train traffic to produce revenue which will contribute to the overhead expenses of the railways, and the influence of competition between the railways and the highway carriers for mail traffic. All of the above factors have been considered in establishing the rates prescribed herein.

The committee believes that discretion to consider other significant factors must be lodged in the Board, since it is the agency entrusted with the rate-making functions under the Civil Aeronautics Act of 1938, in order to insure the administrative flexibility which will be required if the new rate structure is to be stable and operate efficiently. The Board will be able, as is the Interstate Commerce Commission, to determine, after hearing evidence and argument, whether in a given case it should attribute conclusive weight to costs or should take into account additional factors which may be brought to its attention by the Post Office Department and the carriers.

Further, to tie mail rates tightly to cost would require the Board to fix rates in the most complicated and burdensome way possible. It would involve the Board in expensive studies and investigations as well as frequent litigation. The carriers would be compelled to adopt new and cumbersome accounting procedures, with consequent extra expense and loss of efficiency. Evidence presented by competent public accountants has convinced the committee that because of the high percentage of joint costs (that is, costs jointly attributable to passengers, baggage, express, freight, and mail) in the air transport industry it is impossible to determine accurately the cost of transporting any particular class of traffic.

There is no reason to fear that the elimination of the cost provision will result in the establishment of rates which contain subsidy, since the record shows that the Board has been quick to reduce rates for the transportation of air mail whenever possible. It has very substantially reduced the rates for most of the large domestic carriers, and has ordered them to refund over \$9,000,000 in cases where excessive compensation had been paid. During the first quarter of 1952 the domestic airlines carried 20 percent more mail than they carried during the corresponding quarter of 1951, and received 18 percent less money for carrying it.

The question of separation has been under consideration by the Congress and by this committee for several years. Many diverse arguments and views have been received. After careful consideration of the most current and complete information available, the committee is convinced that under the "fair and reasonable" standard proposed in the committee amendment, separation of subsidy from air-mail pay will be effectively accomplished without the defects and uncertainties involved in the proposals requiring adherence to a cost standard.

The Senate bill contained provisions fixing initial rates of compensation for the interstate and overseas air transportation of mail. These initial rates would have remained in effect until the Board, acting upon its own initiative or upon petition, had had an opportunity after hearing to revise them and fix permanent rates. However, after the passage of S. 436 by the Senate, the Civil Aeronautics Board released a study on the "Administrative separation of subsidy from total mail payments to domestic air carriers." The classifications and rates recommended in that study differed materially from the classifications and initial rates provided in the Senate bill. In any event, the sole purpose of prescribing initial legislative rates is to provide a procedure by which subsidy separation can be effected at a specific and early date, and the committee feels that the Board, with the assistance of its own administrative study, should be able to accomplish at least a preliminary separation by the date on which this legislation would become effective—July 1, 1953. The committee amendment therefore fixes no initial rates, nor does it provide for the establishment of temporary rates. The Board has for many years exercised authority to fix temporary rates of compensation pending determination of permanent rates, subject to retroactive adjustment at the time the permanent rates are determined, and it could exercise such authority again if the need arose.

MAIL RATES FOR UNITED STATES INTERNATIONAL AIR LINES

The existing provisions of the Civil Aeronautics Act of 1938 do not differentiate between the establishment of air-mail rates for domestic transportation and those for foreign air transportation. However, the distinctions between the conditions under which our international and domestic air lines operate make it desirable that the international carriers be treated somewhat differently than the domestic carriers are treated. Many problems are present in the international field which do not exist in the domestic field, and the establishment of mail rates for our international carriers must take into consideration the membership of the United States in the Universal Postal Union and, in addition, the fact that our international air transportation system is based largely upon some 44 bilateral aviation agreements which govern the international operation of commercial air services and which are negotiated by the Department of State.

Furthermore, the international routes of our carriers are not certificated by the Board alone, as is the case with domestic routes, but are certificated with the approval of, or by direction of, the President.

The committee amendment establishes a rate formula governing the payment of compensation for the foreign air transportation of mail which is substantially similar to the formula established for the domestic air lines. Section 406 (c) of the Civil Aeronautics Act of 1938, as amended by the committee amendment, directs the Board—

to determine and fix from time to time, after due notice and opportunity for hearing, rates of compensation which, under honest, economical, and efficient management, are fair and reasonable, for the foreign air transportation of mail, the facilities used and useful for such foreign air transportation of mail, and the services connected therewith.

There is, however, one very important exception to this rate formula as it applies to our international carriers:

(T)he rate fixed under this paragraph (section 406 (c) (2)) for the foreign air transportation of mail by an air carrier shall not be less than any rate paid by the United States to a foreign air carrier for similar service.

The rates paid by the Postmaster General to foreign air carriers for the transportation of United States mail are in most cases governed by the Universal Postal Convention and the actions taken thereunder by the Universal Postal Union Congress. These rates are determined by negotiations among the postal representatives of the countries which participate in the UPU Congress, and not by the type of rate proceeding that is customary in the United States. It is generally agreed that the rates in effect under the UPU Convention at the present time are in most cases higher than corresponding rates that might be determined by the Board to be "fair and reasonable." This means, in effect, that so long as the rates paid to foreign air carriers remain at levels which are higher than rates determined by the Board to be "fair and reasonable," the rates paid by the Postmaster General to foreign carriers will be the rates paid to our international carriers for performing similar service.

It should be noted, however, that the UPU Congress is meeting in Brussels at the present time, and it is generally expected that as a result of this meeting the UPU rates will be reduced. If any substantial reduction does occur, it is likely that in some cases at least the applicable UPU rate will fall below the corresponding rates determined to be fair and reasonable for the foreign air transportation of mail, and in those cases the exception to the rate formula contained in section 406 (c) (2) will cease to apply. However, it seemed to the committee essential that the United States Post Office Department should not be put in the position of having to discriminate against our own carriers by paying to foreign carriers a higher rate than it pays to United States carriers for performing similar service with respect to the same or a similar category of mail.

It is true that the UPU Convention fixes only the maximum rates to be paid by one country for the use of air services operated by an airline of another country, and there is nothing in the Convention to prevent the United States legally from rejecting the rate quoted for service over a foreign airline because it is too high. However, our Post Office Department has encouraged the use of maximum UPU rates because such maximum rates have been to our advantage; that is so because we operate regular air service over most of the trade routes of the world, and United States airlines have carried a far greater

quantity of foreign mail than the quantity of United States mail transported by foreign carriers. If the Post Office Department should attempt to have our mail carried by foreign carriers at lower than the maximum UPU rates, in order to avoid having to pay our own international carriers at rates higher than those determined to be fair and reasonable, we could expect a reciprocal reduction to be imposed on our carriers for the foreign mail they carry, with the result that our present favorable balance would be reduced proportionately. Under existing conditions, if the UPU rate were cut in half the subsidies to our carriers would have to be increased by about \$5,500,000, and this increase would be offset only by a reduction in United States payments to foreign carriers of \$1,000,000. The American taxpayer would be required to make up the difference of \$4,500,000.

It should be noted in this connection that if the exception in section 406 (c) were omitted, and the rate fixed for our international carriers were fixed at less than the rate paid by the United States to foreign carriers, the lower rate so fixed would serve other countries as a means for forcing UPU rates down to that level, with the adverse result described in the preceding paragraph.

Statistics furnished by the Civil Aeronautics Board indicate that the inclusion of the exception will not increase the total cost to the American taxpayer. The following table indicates that if the current UPU rates had been paid to United States international carriers during 1951 as compensation for carrying the mail, they would have received approximately \$6,000,000 less than the amount they were actually paid during that year under existing law, which does not provide for the separation of subsidy from air-mail pay.

United States air-mail carriers in foreign service—actual mail pay compared with mail pay at UPU rates¹ and cost rates—12 months ended Dec. 31, 1951

	Mail ton-miles calendar year 1951 ²	Actual mail payments ³	UPU rate (Weihmiller report)		1949 cost plus 10 percent re- turn (after income taxes) based on simple allocation method ⁴		UPU over cost rate (column 4— column 6)	Additional sub- sidy required over UPU (column 2— column 4)
			For interna- tional portion only 1949 ton- mile yield	1949 yield ap- plied to 1951 volume (column 1× column 3)	Rate	Amount (column 1× column 5)		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
			<i>Cents</i>		<i>Cents</i>			
American.....	164, 569	\$123, 000	194. 18	\$319, 000	42. 19	\$69, 000	\$250, 000	
Braniff.....	193, 371	1, 771, 000	151. 96	294, 000	121. 22	234, 000	60, 000	\$1, 477, 000
Chicago & Southern.....	41, 610	1, 853, 000	163. 68	68, 000	95. 38	40, 000	28, 000	1, 785, 000
Colonial.....	20, 695	173, 000	246. 27	51, 000	104. 37	22, 000	29, 000	122, 000
Eastern.....	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)
National.....	17, 343	40, 000	207. 19	36, 000	57. 00	10, 000	26, 000	4, 000
Northwest.....	1, 001, 807	2, 063, 000	250. 67	2, 511, 000	67. 60	677, 000	1, 834, 000	
Panagra.....	455, 298	2, 107, 000	319. 90	1, 456, 000	104. 42	475, 000	981, 000	651, 000
TWA.....	4, 200, 772	9, 014, 000	213. 16	8, 954, 000	85. 76	3, 603, 000	5, 351, 000	60, 000
United.....	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)
Pan American:								
Alaska.....	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)	(⁵)
Atlantic.....	5, 401, 772	13, 686, 000	227. 57	12, 293, 000	98. 13	5, 301, 000	6, 992, 000	1, 393, 000
Latin American.....	2, 203, 327	4, 961, 000	212. 69	4, 686, 000	65. 93	1, 453, 000	3, 233, 000	275, 000
Pacific.....	2, 285, 316	5, 548, 000	220. 43	5, 038, 000	82. 90	1, 895, 000	3, 143, 000	510, 000
PAA total.....	9, 890, 415	24, 195, 000		22, 017, 000		8, 649, 000	13, 368, 000	2, 178, 000
Grand total.....	15, 985, 880	41, 339, 000		35, 706, 000		13, 779, 000	21, 927, 000	6, 277, 000

¹ As developed by Mr. H. E. Weihmiller for the Air Transport Association for the purpose of estimating mail pay at UPU rates for the calendar year 1951.

² Mail ton-miles in foreign service from Post Office Department records.

³ Adjusted to reflect Board orders through Apr. 8, 1952. Most carriers are on temporary mail rates which may be higher or lower than the final rates when they are established. Mail pay related to overseas service has been eliminated on the basis of the ratio of overseas ton-miles to total ton-miles.

⁴ Method B, as developed in Weihmiller report, schedule B-10.

⁵ Overseas only.

The Board is required under the committee amendment, in connection with the foreign air transportation of mail, to publish only the orders establishing the rates of compensation which are actually to be paid to our international carriers. There is no requirement that the Board publish any rate which it determines under section 406 (c) (2) to be the fair and reasonable rate unless that rate is higher than the rate paid to foreign air carriers for similar service and is therefore the rate which is actually to be paid, although the Board must in every case determine the rate which would be fair and reasonable. The committee feels, however, that the Board should publish all such rates, whether or not actually paid, except where it determines, after consulting with the Department of State and the Post Office Department, that disclosure would be detrimental to the national interest.

SUBSIDY CONTRACTS

Under the committee amendment, section 406 (f) of the Civil Aeronautics Act of 1938 will contain the separated provisions authorizing the payment of subsidy to air carriers certificated to carry mail, for the expressed purpose of encouraging the development of an air transport system properly adapted to the present and future needs of (1) the foreign and domestic commerce of the United States, (2) the postal service, and (3) the national defense. This standard is the same as the standard under which subsidy is granted pursuant to existing law.

Under the committee amendment, the payment of subsidy will be made only under contracts entered into between the Civil Aeronautics Board and the air carriers. To an increasing degree the larger carriers with well-established and heavily used schedules are becoming self-sufficient and therefore no longer in need of the subsidy which was originally required in order to promote the development of the air transport system. It is the feeling of the committee that, with the exception of some of the international carriers, it is the smaller airlines which are most in need of subsidy today and which will continue to require subsidy. The continued development of these smaller carriers is vital, since they provide local and feeder service in areas not reached by the trunk airlines and play an increasingly important part in the national defense program. It is essential that steps be taken to insure that mail is not diverted from the smaller carriers solely because of their higher cost, and to stabilize their operations by certification for longer periods of time.

It is perhaps most important of all that the smaller carriers be given adequate assurance that the subsidy which they need in order to continue operations will remain available to them as long as they need it, and the committee has accordingly included in its amendment provisions requiring that all subsidy payments be made under contracts guaranteeing that such payments will continue for a period of years. If it were necessary for these carriers to rely for their continued existence on annual appropriations, they could not finance themselves, nor could they make long-range plans to improve their service or to acquire more efficient and economical equipment. To acquire capital they must be able to give some assurance of their ability to continue in business. If they can only make commitments with respect to one fiscal year it is obvious that no progress can be

expected of them, and either they will be a drain on the taxpayer forever or the communities they serve will be denied air transportation. Subsidy contracts entered into under the committee amendment will provide for payments over a maximum period of 5 years in the case of foreign air transportation and over a maximum period of 3 years in the case of interstate or overseas air transportation.

The committee feels, however, that safeguards must be included in the bill in order to insure that an air carrier will not receive more subsidy under a contract than it really needs. The committee amendment therefore provides that each air carrier entering into a subsidy contract must agree to repay to the United States any part of the subsidy payments received by it which, when added to its net profits from the subsidized air transportation during the period of the contract, exceeds the amount of subsidy which the Board finds is necessary to assure the carrier a fair return during such period on that portion of its total investment attributable to such air transportation. The Senate bill, following the Merchant Marine Act of 1936, requires that each contract contain a recapture provision obligating the carrier to repay to the United States 50 percent of its net profits in excess of 10 percent per annum of the carrier's investment. The committee feels that the Senate recapture provision is objectionable because it seems to establish 10 percent as a proper measure of the profits needed by an air carrier to carry out the objectives of the Civil Aeronautics Act. Such a provision might be interpreted as constituting a guarantee to carriers of at least that amount of profits or as placing a ceiling on the amount of profits which a carrier should realize, regardless of circumstances. The Senate provision could result in an unintended gift of public funds to the carriers. The committee believes that the carriers should be required under these subsidy contracts to repay the total amount of any excessive profits which they may earn while receiving subsidy.

In order to insure that subsidy contracts are not unduly inflexible, the committee amendment further provides that the Board may amend any such contract if, after due notice and opportunity for hearing, it finds that changing circumstances have rendered the agreed subsidy payments excessive or inadequate.

Recognizing that in some cases the need of an air carrier for subsidy may be so urgent that it cannot remain in operation unless it receives financial aid prior to the completion of a hearing on its petition, the committee has included a provision authorizing the Board without hearing to make advances to air carriers. Any part of any advance made to an air carrier which exceeds the amount of subsidy to which it is finally found to be entitled must be repaid to the United States.

It should be emphasized that as long as an air carrier is in need of subsidy, the level at which it is paid compensation under the amended section 406 (a) or the amended section 406 (c) will not affect the total amount of Federal payments received by the carrier or the total cost to the Government; the application of the "fair and reasonable" standard may result in a lower rate of compensation for transporting the mail than the rate received under existing law, but the subsidy, even though to be separately provided for and paid out of different funds, will be in whatever amount is necessary to meet such need.

EXPLANATION OF THE COMMITTEE AMENDMENT BY SECTIONS

SECTION 1

This section contains the short title for the legislation.

SECTION 2

This section contains two subsections, (a) and (b).

Subsection (a) extensively amends section 406 of the Civil Aeronautics Act of 1938, and that section as it would be amended is explained below.

Subsection (b) provides that the amendment to section 406 shall become effective on July 1, 1953. The practical effect of this is that present law (which does not provide for separation of subsidies from mail rates) would continue to apply with respect to rates for air transportation of mail occurring before July 1, 1953, whereas the amended section 406 would apply with respect to rates and subsidies for air transportation of mail occurring on or after July 1, 1953.

Amended section 406 (a) and (b)

These subsections relate to the payment of compensation for domestic and overseas air transportation of mail—that is, transportation between points in the United States, including its Territories and possessions.

Paragraph (1) of the amended section 406 (a) provides that each air carrier holding a certificate authorizing the transportation of mail by aircraft shall be paid by the Postmaster General, for transportation of mail in air transportation (including transportation of mail by means other than aircraft in certain limited cases) between points in the United States, at a rate or rates established under paragraph (2). The paragraph also provides that the weight of each mail dispatch to any point shall be considered to be at least 15 pounds. Finally, the paragraph provides that the Postmaster General may not delay mail or withhold mail from an air carrier merely because the rate payable to such carrier is higher than the rate payable to a competing carrier.

Paragraph (2) of the amended section 406 (a) directs the Civil Aeronautics Board from time to time to determine and fix rates of compensation which, under honest, economical, and efficient management, are fair and reasonable, for the transportation of mail in air transportation between points in the United States, the facilities used and useful for such transportation of mail, and the services connected therewith. The Board has power under this paragraph to prescribe the method or methods for ascertaining such rates of compensation, and may fix different rates for different air carriers or classes of air carriers, or different classes of service, or on the basis of any other reasonable classification of carriers, services, routes and route segments, or any combination thereof. The Board shall publish the orders establishing the rates of compensation, and such orders shall continue in force until changed by the Board after due notice and opportunity for hearing. Such orders may be made effective as of any date, on or after the date of the enactment of this act, which the Board determines to be proper, except that no such order shall be effective prior to the commencement of the proceeding in which it is issued.

Paragraph (1) of the amended section 406 (b) requires that each petition for the determination or revision of rates under section 406 (a) shall include a statement of the mail rate which the petitioner considers fair and reasonable. It requires the Postmaster General to include in the record, in proceedings under section 406 (a), a comprehensive statement of all service to be required of the carrier together with certain other information deemed by him or by the Board to be material to the inquiry.

Paragraph (2) of the amended section 406 (b) allows the Postmaster General to request the Board to obtain from any certificated carrier such information as he may require in connection with mail rate proceedings under section 406 (a).

Paragraph (3) of the amended section 406 (b) emphasizes that the petitioner has the burden of proof in any proceeding initiated by petition under section 406 (a).

Amended section 406 (c)

This subsection makes provision for the payment of compensation for the foreign air transportation of mail.

It establishes standards and procedures with respect to the payment of compensation for the foreign air transportation of mail which are substantially similar to those established by the amended section 406 (a) with respect to the air transportation of mail between points in the United States, although there are certain important differences which are indicated below.

Paragraph (1) provides that each air carrier holding a certificate authorizing the transportation of mail by aircraft shall be paid by the Postmaster General for the foreign air transportation of mail at a rate or rates established under paragraph (2). The paragraph also provides that the Postmaster General may not delay mail or withhold mail from an air carrier merely because the rate payable to such carrier is higher than the rate payable to a competing air carrier or an air carrier engaged in the transportation of mail in overseas air transportation.

Paragraph (2) directs the Civil Aeronautics Board from time to time to determine and fix rates of compensation which, under honest, economical, and efficient management, are fair and reasonable, for the foreign air transportation of mail, the facilities used and useful for such transportation, and the services connected therewith; but it is provided that the rate fixed under this paragraph for the foreign air transportation of mail by an air carrier shall not be less than any rate paid by the United States to a foreign air carrier for similar service. This exception, which is the chief point of difference between the rate formulas provided under this bill for domestic and foreign air transportation of mail, means in effect that where rates paid to foreign air carriers are at levels which are higher than those determined to be fair and reasonable, those rates will be the rates paid to United States air carriers for the foreign air transportation of mail.

The Board has power under this paragraph to prescribe the method or methods for ascertaining fair and reasonable rates of compensation, and may, considering the conditions peculiar to foreign air transportation and to the particular air carrier or class of air carriers, fix different rates for different air carriers or classes of air carriers, or different classes of service, or on the basis of any other reasonable classification

of carriers, services, routes and route segments, or any combination thereof. The orders establishing the rates of compensation to be paid under this subsection may be made effective as of any date, on or after the date of the enactment of this act, which the Board determines to be proper, except that no such order shall be effective prior to the commencement of the proceeding in which it is issued. Such orders are to continue in force until changed by the Board after due notice and opportunity for hearing.

The Board is required under this paragraph to publish the orders establishing the rates of compensation which are actually to be paid. Therefore, in any case where the rate determined to be fair and reasonable will not be the rate actually fixed and paid because it is less than the rate paid to a foreign carrier for similar service, there is no mandate upon the Board to publish the fair and reasonable rate. Regardless of the rate which is actually fixed and paid, it will be the duty of the Board in all cases to determine the rate which would be fair and reasonable within the meaning of paragraph (2).

Amended section 406 (d)

Section 406 (d), which is the same as section 406 (f) in the existing law, provides that where air transportation is performed between the United States and a foreign country both by United States aircraft and by foreign aircraft, the Postmaster General shall not pay the foreign carrier a rate of compensation for transporting mail between the United States and the foreign country which would result in such carrier receiving a higher rate of compensation for transporting such mail than (1) the rate which the foreign country pays to air carriers for transporting its mail between such country and the United States, or (2) a rate determined by the Postmaster General to be comparable to the rate such foreign country pays to air carriers for transporting its mail to another country which is intermediate on the route of such carriers to the United States.

Amended section 406 (e)

Section 406 (e), which is the same as section 406 (d) in the existing law, provides for the weighing by the Postmaster General of mail transported by aircraft, and for the employment by the Postmaster General of clerical and other assistance required in connection with proceedings under the Civil Aeronautics Act.

Amended section 406 (f)

This subsection makes provision for subsidy payments to air carriers.

Paragraph (1) empowers the Civil Aeronautics Board to enter into subsidy contracts with air carriers holding certificates authorizing the transportation of mail in air transportation. The amount of subsidy payable to any air carrier under such a contract would be the amount necessary to enable the carrier, under honest, economical, and efficient management, to encourage the development of an air transport system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the postal service, and of the national defense. Such contracts will provide for payments to air carriers furnishing air transportation over a period not exceeding 5 years in the case of foreign air transportation and not exceeding 3 years in the case of interstate or overseas air

transportation. To be eligible for such payments, an air carrier must agree to repay to the United States any part of such payments which, when added to its net profits from the subsidized air transportation during the period of the contract, exceeds the amount of such payments which the Board finds to be necessary in order to assure the carrier a fair return during such period on that portion of its total investment which is used and useful in such air transportation. Such repayments are to be credited to appropriations available for the payment of subsidies under this subsection. The paragraph further provides that the Board may amend any such contract after due notice and opportunity for hearing if it finds that changed circumstances have rendered the agreed payments excessive or inadequate. Each petition for subsidy must state in detail the amount of the payments which the petitioner needs, and the petitioner will have the burden of proving such need.

Paragraph (2) provides that in determining whether subsidy should be paid or in fixing the amount of the payments, the fact that a carrier holds a certificate of public convenience and necessity authorizing it to offer certain service would not be conclusive in determining whether such service is sufficiently required to justify the payments that would be necessary to enable the carrier to continue the service. Notice to interested parties (including communities receiving the service) and an opportunity for them to be heard must be given in any proceeding where that issue is raised. If the Board determines that the need for such service does not justify the payment necessary to continue it, and the payment is accordingly denied, the carrier may suspend or abandon the service at any time within 1 year from the date of the order denying payment.

Paragraph (3) gives the Board authority, with or without hearing but upon a showing by the carrier concerned of essential and urgent need, to make an advance to any air carrier pending determination of the amount of subsidy to which it is entitled. The carrier must agree to repay any part of such advance which exceeds the amount to which it is finally determined by the Board to be entitled, and such repayments are to be credited to appropriations available for the payment of subsidies under this subsection.

Paragraph (4) provides that the Board shall terminate subsidy payments to an air carrier whenever it finds, after due notice and opportunity for hearing, that gratuities have been offered or given by such carrier to a Government official with the intention of securing special treatment under the Civil Aeronautics Act of 1938.

SECTION 3

This section would amend section 401 (d) of the Civil Aeronautics Act of 1938, which governs the issuance of certificates authorizing air carriers to engage in air transportation, by providing that no certificate which authorizes the transportation of mail only may be issued without the approval of the Postmaster General and that no such certificate shall be amended so as to authorize the extension of mail service to additional areas without the approval of the Postmaster General.

SECTION 4

This section would amend section 416 (a) of the Civil Aeronautics Act of 1938, which deals with the classification of air carriers according to the nature of services performed, by adding language to provide more detailed standards and procedures for the classification of those air carriers which will be paid for the transportation of mail under the amended section 406 (a)—that is, for transportation of mail otherwise than in foreign transportation. The Board is authorized, in the case of any air carrier certificated to transport mail in both interstate and overseas air transportation, to classify the interstate and overseas services of the carrier in different classes if such action is warranted by differences in operating conditions and costs. In addition, the Board is directed to reclassify any such carrier, after due notice and opportunity for hearing, whenever a change in conditions warrants such reclassification, and the carrier is given the right to petition for such reclassification.

SECTION 5

This section would amend section 206 of the Civil Aeronautics Act, which requires the Board to make an annual report to the Congress, by providing that such report must include data relative to air-mail payments and subsidy payments (both in the aggregate and on an individual basis) made under the amended section 406, with references to the appropriate decisions of the Board in order that the bases of each mail payment and each subsidy payment can be readily determined.

SECTION 6

This section authorizes the appropriation of such sums as are necessary to carry out the provisions of the act.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as passed the Senate, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CIVIL AERONAUTICS ACT OF 1938, AS AMENDED

TITLE IV—AIR CARRIER ECONOMIC REGULATION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Certificate Required

Sec. 401. (a) * * *

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Issuance of Certificate

(d) (1) The Authority shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied [.] *Provided,*

That no certificate authorizing the transportation of mail only shall be issued nor shall such a certificate be amended to authorize the extension of mail service to additional areas without the approval of the Postmaster General.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Authority may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority hereunder.

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TRANSPORTATION OF MAIL

Continuation and Termination of Mail Contracts

SEC. 405. (a) * * *

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Tender of Mail

(g) From and after the issuance of any certificate authorizing the transportation of mail by aircraft, the Postmaster General shall tender mail to the holder thereof, to the extent required by the Postal Service, for transportation between the points named in such certificate for the transportation of mail, and such mail shall be transported by the air carrier holding such certificate in accordance with such rules, regulations, and requirements as may be promulgated by the Postmaster General under this section. *All mail marked for carriage by air and bearing the appropriate postage thereon shall, to the extent that authorized air transportation is available, be tendered for transportation to its destination by an air carrier, except where weather conditions, strikes, breakdowns, or other similar unusual circumstances render it advisable to transport such mail by other means in order to avoid undue delay.*

* * * * *

[RATES FOR TRANSPORTATION OF MAIL

[Authority to Fix Rates

[SEC. 406. (a) The Authority is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same; and the rates so fixed and determined shall be paid by the Postmaster General from appropriations for the transportation of mail by aircraft.]

PAYMENTS FOR TRANSPORTATION OF MAIL AND FOR ESSENTIAL AIR TRANSPORTATION

Rates For The Air Transportation Of Mail Between Points In The United States

SEC. 406. (a) (1) *Each air carrier holding a certificate authorizing the transportation of mail by aircraft shall be paid for transportation of mail in air transportation between points in the United States on schedules designated or ordered to be established by the Postmaster General pursuant to section 405 (e) of this Act at a rate per ton-mile of mail carried as follows, depending on the classification of such carrier or its services as established by the Board under section 416 (a) of this Act:*

Class 1—45 cents per ton-mile;

Class 2—133½ per centum of the rate for class 1;

Class 3—166½ per centum of the rate for class 1;

Class 4—200 per centum of the rate for class 1; and

Class 5—400 per centum of the rate for class 1;

Such payment shall be considered to include payment for facilities used and useful for such transportation of mail, services connected therewith, and transportation of mail by an air carrier by other means than aircraft whenever transportation by such other means is incidental to such transportation of mail in air transportation or is made necessary by conditions of emergency arising from aircraft operation. In the computation of such payment the mileage used shall be the airport to airport mileage, as established by the Board, in such mail schedules, and the weight of each mail dispatch to each point to which mail is dispatched shall be considered to be, as a minimum, not less than 15 pounds. Such payments shall be made by the Postmaster General from funds appropriated for the transportation of mail by aircraft, and he shall not delay mail or withhold mail from an air carrier because the rate for the transportation of mail payable to such carrier may be higher than the rate payable to a competing air carrier.

(2) The Board is authorized, upon its own initiative or upon petition of the Postmaster General or an air carrier with respect to the rate received by it, (A), from time to time, after notice and hearing, to revise the rates established in paragraph 1 of this subsection and to fix and determine further or different rates for such air carriers, individually or on a class basis, upon a finding that such action is necessary in order to maintain rates of compensation for the transportation of the mail at a fair and reasonable level; (B) to add to or reduce the number of classes established in the first paragraph of this subsection or to prescribe a different method or methods for ascertaining rates of compensation for such transportation of the mail, by ton-mile, aircraft-mile, weight of mail, space authorized for mail in the aircraft, or other measure of mail service performed; and (C) to fix different rates for different air carriers or classes of air carriers, or different classes of service, or on the basis of any other reasonable classification of carriers, services, routes and route segments, or any combination thereof. The rates so revised shall be based upon the experienced costs for mail transportation services rendered and upon projected costs for such services to be rendered, under honest, economical, and efficient management, fairly assigned and apportioned to such mail services, including a fair return on that portion of the total investment which is used and useful in such mail services. Such revision or other action with respect to rates may be made effective as of any date which the Board determines to be proper and which is (A) on or after the effective date of this subsection and (B) on or after the date on which the proceeding was commenced, and the rates so revised shall be published by the Board.

Recommendations As To Rates

(b) (1) Any petition for the revision or determination of rates under subsection (a) of this section shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under subsection (a) of this section a comprehensive statement of all service to be required of the air carrier and such other information in his possession as he deems, or as may be deemed by the Board, to be material to the inquiry.

(2) The Postmaster General is authorized to request the Board to obtain from any carrier certificated for the transportation of mail, information necessary for the performance of his duties with respect to the initiation of and participation in mail rate proceedings under subsection (a) of this section.

Rates For Foreign Air Transportation Of Mail Until July 1, 1953

(c) (1) The Board is empowered and directed until July 1, 1953, upon its own initiative or upon petition of the Postmaster General or an air carrier with respect to the rate received by it, (A) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the foreign air transportation of mail, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to foreign air transportation of mail or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the foreign air transportation of mail, and to make such rates effective from such date as it shall determine to be proper; (B) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (C) to publish the same; and the rates so fixed and determined shall be paid by the Postmaster General from appropriations for the transportation of mail by aircraft, and he shall not delay mail or withhold mail from an air carrier because the rate for the transportation of mail payable to such carrier may be higher than the rate payable to a competing air carrier or an air carrier engaged in the transportation of mail in overseas air transportation.

[Rate-Making Elements]

[(b)] (2) In fixing and determining fair and reasonable rates of compensation under this [section] subsection, the [Authority] Board, considering the conditions peculiar to foreign air transportation [by aircraft] and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the [Authority] Board shall take into consideration, among other factors, the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the foreign air transportation of mail; such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the foreign air transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

[Statement of Postmaster General and Carrier]

[(c)] (3) Any petition for the fixing of fair and reasonable rates of compensation under this [section] subsection shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under this [section] subsection a comprehensive statement of all service to be required of the air carrier and such other information in his possession as he deems, or as may be deemed by the [Authority] Board, to be material to the inquiry.

Rates For Foreign Air Transportation Of Mail On And After July 1, 1953

(d) Effective on and after July 1, 1953, each air carrier holding a certificate authorizing the transportation of mail by aircraft shall be paid for the foreign air transportation of mail on schedules designated, or ordered to be established, by the Postmaster General pursuant to section 405 (e) of this Act, at rates determined by him which (1) shall not exceed any rates for the same category of United States mail as prescribed from time to time by the Universal Postal Union Congress, and (2) shall not be less than any rates paid by the United States to foreign carriers for similar service. The Postmaster General shall make payments under this subsection from funds appropriated for the transportation of mail by aircraft, and he shall not delay mail or withhold mail from an air carrier because the rate for the transportation of mail payable to such carrier may be higher than the rate payable to a competing air carrier or an air carrier engaged in the transportation of mail in overseas air transportation. The Board shall, at the request of the Postmaster General, advise him as to the cost to any air carrier of furnishing foreign air transportation on such a basis as he shall prescribe.

[Availability of Appropriations]

[(e)] Except as otherwise provided in section 405 (k), the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Air Mail Act of 1934, as amended, and the unexpended balances of all appropriations available for the transportation of mail by aircraft in Alaska, shall be available, in addition to the purposes stated in such appropriations, for the payment of compensation by the Postmaster General, as provided in this Act, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the continental United States or between points in Hawaii or in Alaska or between points in the continental United States and points in Canada within one hundred and fifty miles of the international boundary line. Except as otherwise provided in section 405 (k), the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Act of March 8, 1928, as amended, shall be available, in addition to the purposes stated in such appropriations, for payment to be made by the Postmaster General, as provided by this Act, in respect of the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the United States and points outside thereof, or between points in the continental United States and Territories or possessions of the United States, or between Territories or possessions of the United States.]

Payments to Foreign Air Carriers

[(f)] (e) In any case where air transportation is performed between the United States and any foreign country, both by aircraft owned or operated by one or more air carriers holding a certificate under this title and by aircraft owned or operated by one or more foreign air carriers, the Postmaster General shall not pay to or for the account of any such foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country which, in his opinion, will result (over such reasonable period as the Postmaster General may determine, taking account of exchange fluctuations and other factors) in such foreign air carrier receiving a higher rate of compensation for transporting such mail than such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and the United States or receiving a higher rate of compensation for transporting such mail than a rate determined by the Postmaster General to be comparable to the rate such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and an intermediate country on the route of such air carrier between such foreign country and the United States.

Weighing of Mail

[(d)] (f) The Postmaster General may weigh the mail transported by aircraft and make such computations for statistical and administrative purposes as may be required in the interest of the mail service. The Postmaster General is authorized to employ such clerical and other assistance as may be required in connection with proceedings under this Act. If the [Authority] Board shall determine that it is necessary or advisable, in order to carry out the provisions of this Act, to have additional and more frequent weighing of the mails, the Postmaster General, upon request of the [Authority] Board, shall provide therefor in like manner, but such weighing need not be for continuous periods of more than thirty days.

Subsidy Payments for Essential Air Transportation

(g) (1) For the purpose of maintaining and continuing the development of air transportation (including the introduction of new and improved types of commercial aircraft) to the extent and of the character and quality required to promote the economic development, the national defense, and the commerce of the United States, the Board is empowered, upon petition of any air carrier holding a certificate authorizing transportation of mail by aircraft, and after notice and hearing, to make payments, out of funds appropriated to the Board for the purpose of this subsection, to such carrier to enable it under honest, economical, and efficient management to effect such purpose. The Board may prescribe the method of making such payments and their period of duration and a new petition and notice and hearing shall be required before any further payments are made to such carrier for subsequent periods under this subsection. Each such petition shall state in detail the amount of payments the petitioner needs in order to effect the purpose of this subsection, and the petitioner shall have the burden of proving such need.

(2) In determining whether any payments should be made to a carrier under this subsection, and the amount of such payments, the fact that such a carrier holds a certificate of public convenience and necessity authorizing it to conduct certain services shall not be deemed conclusive of the issue as to whether any such service is sufficiently required for the purposes of this subsection to justify the amount of payments that would be required under this subsection to enable such carrier to continue such service. In any proceeding in which any such issue is raised, the Board shall give notice to interested parties (including communities in the United States receiving such service) and permit such parties to be heard. If the Board shall determine that the need for such service does not justify the amount of payment that would be required under this subsection to continue it, its final order denying such payment shall be accompanied by an order authorizing such carrier either to suspend or abandon such service as the carrier may elect, at any time within one year from the date of such order.

(3) During the pendency of proceedings to determine the amount of payment to any air carrier under this subsection, the Board is authorized, with or without hearing, to make an advance, out of funds appropriated for the purpose of this subsection, to such carrier upon a showing that the need for such an advance is essential and urgent. Before receiving such an advance such carrier shall be required to agree to repay within a reasonable time such advance, or any part thereof, which exceeds the

payment, if any, to such carrier finally determined by the Board under this subsection. Such repayments shall be made to the Treasurer of the United States and shall be credited to appropriations made available for the purpose of this subsection.

(4) Effective after June 30, 1953, the Board is authorized, upon petition of any air carrier holding a certificate authorizing the air transportation of passengers, property, and mail, to enter into a contract with such carrier on behalf of the United States providing that payments determined under this subsection in order to effect its purpose in such air transportation will be made to such carrier over any period not exceeding five years in the case of such payments made to effect such purpose in foreign air transportation, and not exceeding three years in the case of such payments made to effect such purpose in interstate and overseas air transportation if such carrier (A) continues to furnish such air transportation under such certificate, and (B) agrees to pay to the United States 50 per centum of all of its net profits from such air transportation for such period (computed without regard to capital gains and capital losses and after deduction of all applicable taxes and reasonable charges for depreciation, obsolescence, and amortization) which exceed an average of 10 per centum per annum of the capital investment of such carrier used in or useful for such transportation, but such payment shall not exceed the total amount received by such carrier from the United States under such contract. Any such payments shall be made to the Treasurer of the United States, and shall be credited to appropriations made available for the purposes of this subsection.

(5) The Board shall, by written notice to the air carrier, terminate any payments under this subsection upon finding, after notice and hearing, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by such air carrier or its agent or representative to any officer or employee of the Government with a view toward securing favorable treatment under any provisions of this Act.

* * * * *

CLASSIFICATION AND EXEMPTION OF CARRIERS

Classification

SEC. 416. (a) The Board shall classify each air carrier which will receive payments under section 406 (a) of this Act, as amended by the Air Mail Subsidy Separation Act of 1951, into such classes as may be required for the purposes of such section, as amended by such Act, under standards established by the Board on the basis of types of communities served, services rendered, and route patterns: Provided, That in the case of any air carrier which is authorized by certificate to transport mail in both interstate and overseas air transportation, the Board may, for the purposes of such section, place the interstate and overseas services of such carrier in different classes if, in the judgment of the Board, such classification is warranted by differences in operating conditions and costs. The Board shall, after notice and hearing, reclassify such carrier for the purpose of such section at any time a change in conditions warrants such reclassification, and any such carrier may petition for such a reclassification. The [Authority] Board also may from time to time establish such other just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules, and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the [Authority] Board finds necessary in the public interest.

MINORITY VIEWS

On February 21, 1949, the Hoover Commission filed its Post Office recommendations.

Referring to "subsidies," it stated:

Payments to common carriers for transporting the domestic and foreign air mail are fixed by the Civil Aeronautics Board at a level to provide a subsidy to aviation. Contracts for overseas mail are also made on a subsidy basis. These subsidies may be most desirable.

Its recommendation No. 9 was:

We recommend, however, that the amounts of these subsidies should be paid to the Post Office by open appropriation from tax funds and not imposed upon the Post Office or the mail users in this hidden manner.

It concluded:

By such a course, the President, the Congress, and the public may know what the amounts of these subsidies are.

On the same date the gentleman from Massachusetts, Mr. Kennedy introduced the first comprehensive air mail subsidy separation bill, H. R. 2908.

The House Committee on Interstate and Foreign Commerce held extensive hearings and executive sessions. During this time there was introduced another bill, H. R. 9184, which contained several modifications which had been recommended to the committee.

On August 31, 1950, H. R. 9184, was reported by the committee by a vote of 15 to 2.

During December of that year the House considered H. R. 9184. After a conference of members interested in legislation in this field six amendments were brought to the floor, were adopted, and the bill passed the House unanimously on December 11, 1950.

No one who participated in that conference was satisfied with all the amendments proposed but agreement was reached in the hope of obtaining full legislative action prior to adjournment. However, there was no action taken in the Senate before adjournment.

Early in this session of Congress, the gentlemen from Massachusetts, Mr. Kennedy and Mr. Heselton, reintroduced several identical bills covering several approaches to the problem of adequate separation. One, H. R. 508 (Mr. Kennedy) served throughout the hearings as the more desirable approach and much testimony was received in support of it. It was the closest of any pending bill to the provisions of H. R. 9184, Eighty-first Congress. With date revisions it was offered in committee as the basis of a motion to substitute. That motion lost by a vote of 8 to 14. On June 25, that bill, so revised as to dates, was introduced in House, and is H. R. 8356, by the gentleman from Massachusetts, Mr. Heselton. It is intended to be the basis of a motion to substitute, if and when House action is taken upon the bill reported by a majority of the committee.

We know of no new evidence submitted since the committee report of the Eighty-first Congress of August 31, 1950, on H. R. 9184 or

of any changed circumstances which would justify our taking a different stand on the same legislation. The report of the committee at that time is therefore directly pertinent to H. R. 508.

While some of us among the minority supported the reporting out of a different bill, this action was done only after H. R. 508 had been voted down within the committee and only for the purpose of having some bill brought forth so that the whole House would have an opportunity to substitute all, or at least the most important parts, of H. R. 508 in place of S. 436. Unless the most important features of H. R. 508 and the sound principles of the committee report of the Eighty-first Congress are at this time adopted by the House, the resulting law would not be, in our opinion, worth while adding to the statute books. We say this because S. 436 as passed by the Senate is weak in so many respects that unless a strong bill is passed by the House, the only result of a conference between the two bodies can be a weak law. To enact a law as unsatisfactory as are both S. 436 and the present House committee version of S. 436 would be, in our opinion, not only entirely unsatisfactory but also worse than taking no action at all.

The basic principles in the committee report of the Eighty-first Congress are quoted below, and subsequent testimony in the House hearings of the Eighty-second Congress serves only to confirm the soundness of the committee's original action:

(H. Rept. 3041, 81st Cong., 2d sess., by Mr. Beekworth, from the Committee on Interstate and Foreign Commerce)

REPORT

(To accompany H. R. 9184)

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 9184) to provide for the separation of subsidy from air-mail pay, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

* * * * *

SITUATION UNDER EXISTING LAW

* * * No other existing public utility legislation has come to the attention of this committee which lumps a compensatory rate and subsidy in a manner similar to the way it is done in the Civil Aeronautics Act. Prior to 1936, steamship lines were subsidized through the mechanism of mail payments, but this system was replaced by the direct operating and construction subsidies provided by the Merchant Marine Act of 1936. The Interstate Commerce Commission fixes only the fair compensation for the services rendered by the railroads in carrying the mail, which compensation is paid by the Post Office Department. There is no provision in the statute under which the Interstate Commerce Commission operates for compensation for the development of a sound national surface transportation system.

The unique provision in the Civil Aeronautics Act is to be found in section 406 (b). After enumerating specific factors that should be considered in determining rates for the transportation of mail, subsection (b) goes on to direct the Civil Aeronautics Board to consider also "the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the postal service, and the national defense."

This quoted "need" provision has meant that where a carrier has been unable, after honest, economical, and efficient management, to earn a fair return on the operations found by the Board to be required for the development of a sound air transportation system to serve national objectives, air-mail pay has been used to raise its total revenues to the point where it would have such a return.

SUBSEQUENT SUPPORTING TESTIMONY

Since publication of the committee report of the Eighty-first Congress, the Civil Aeronautics Board has testified that under the so-called need clause of the present Civil Aeronautics Act, the Post Office Department has been required to pay to the airlines during the fiscal year 1951 approximately \$117,000,000 of which sum the Civil Aeronautics Board has estimated that only about \$37,000,000 can be considered compensation for services rendered. Thus approximately \$80,000,000 constituted a hidden subsidy to the recipient airlines. Under H. R. 508, the Post Office would be entirely relieved from the burden of such subsidies, but would not be, as is pointed out below, entirely so under the majority version of S. 436.

SUPPORT FOR SEPARATION

(Committee report of 81st Cong.)

The proposal to separate the subsidy element from air-mail pay has the firm support of the executive branch, as well as the support of many private groups and persons * * * The great preponderance of opinion favors separation. In his 1951 budget message to the Congress (H. Doc. No. 405), the President of the United States stated (pp. M70-71):

* * * "At present, direct financial assistance to the airlines is provided through air-mail payments, which are set generally at levels adequate to cover deficiencies in the carriers' commercial revenues. Subsidy is thus merged with the fair compensation for carrying mail, making it difficult to evaluate the cost of this aid in relation to its benefits. The recent rise in total air-mail payments—to an estimated level of about \$125,000,000 in 1950—has made it increasingly important that the subsidy element be separately identified. I recommend, therefore, the immediate enactment of legislation to authorize the separation of subsidy payments from mail compensation. Such subsidies should be paid from funds appropriated to the Civil Aeronautics Board specifically for that purpose.

* * * * *
 "A report of the House Post Office and Civil Service Committee, Eightieth Congress, second session (Rept. No. 1958),¹ made the following recommendation (p. 4):

"It is the recommendation of the committee that the subsidy element in air-mail pay be separated. It has been suggested that this could be arrived at by accounting procedures in the Post Office Department. However, this procedure would not eliminate the basic objection which is that, under the present situation, we have an administrative board allocating public funds through which basic public policies are established without action directly by the Congress. The better solution is to make provisions for subsidies directly to the Civil Aeronautics Board."

"Government agencies, including the Department of Commerce, the Post Office Department, and the Civil Aeronautics Board, have endorsed separation. Indeed, about the only ones who presently appear to oppose the objective are several airlines certificated for the transportation of mail mostly of the smaller variety."

SUBSEQUENT SUPPORTING TESTIMONY

Since the committee report of the Eighty-first Congress, the House Appropriations Committee reported:

It is again recommended that legislation be enacted to separate airline subsidies from compensation for the cost of carrying air mail. The subsidy portion, if any, should be paid through a separate appropriation rather than as presently handed through the appropriation for the Post Office Department.²

¹ H. Rept. 1958, 80th Cong., by Mr. Rees, from the Committee on Post Office and Civil Service.
² H. Repts. 685 and 1665, 82d Cong., by Mr. Rooney, from the Committee on Appropriations.

Representatives from labor organizations have testified for H. R. 508, as have taxpayers, veterans, and other civic-minded groups and individuals. In addition, the President of the United States has repeated his earlier recommendations on subsidy separation in even stronger terms in his 1952 and 1953 budget messages to the Congress.

THE COST STANDARD

(Committee report of 81st Cong.)

This bill accomplishes the separation of subsidy from mail pay by amending subsections (a), (b), and (c) of section 406 of the Civil Aeronautics Act so that subsections (a) and (b) deal solely with the fixing of fair and reasonable rates for the transportation of mail, and subsection (c) deals solely with subsidy for essential aircraft operation. Paragraph (2) of the amended subsection (a) provides that the fair and reasonable rates—

“* * * shall not exceed the necessary cost to the air carrier, under honest, economical, and efficient management, of the mail transportation services actually rendered or such services to be rendered * * * plus a fair and reasonable return.”

The committee feels that this provision is called for by reason of the present rate-making provision of the Civil Aeronautics Act under which compensation for the transportation of mail, and subsidy for the development of a sound air transportation system, have been lumped over a period of 12 years. The committee deems this provision necessary to insure as completely as the present state of the science of accounting will permit the clear separation of the subsidy element from mail pay. Unless this is done and done well, there is serious danger that no matter how clearly we state that we want the subsidy element separated, it will still remain in substantial part in the compensation for the transportation of mail. This provision is fair and just to the carriers and the Government alike. Section 405 (g) of the Civil Aeronautics Act imposes a duty upon carriers certificated for the carriage of mail to carry mail tendered them by the Postmaster General. It also requires the Postmaster General to tender mail “to the extent required by the Postal Service.” Thus, there are obligations on both sides. Considering the fact that public utilities are entitled only to a fair and reasonable return on their investments devoted to the public service, there is no occasion for air carriers to object if they receive no more than their costs, plus a fair and reasonable return, for transporting mail, and on the other hand, the Government cannot reasonably object to making payment in that amount for the service it receives.

SUBSEQUENT SUPPORTING TESTIMONY

This cost standard, which is totally absent from the bill reported by the majority, is essential to protect the Post Office and the taxpayers from continuing to be overcharged by the airlines for carriage of the mail.

Subsequent to the committee report of the Eighty-first Congress, the former Chairman of the Commission on Organization of the Executive Branch, former President Hoover, wrote that—

The most practical and accurate way to separate these two types of payments is to base the determination of the mail pay upon what it costs the carriers to furnish mail carriage services to the post office. * * * That type of standard will make it possible for the taxpayers and the Congress to have accurate information. In order for the reform to be effective, it is not equitable to exempt any mail carriers, foreign or domestic. The reform should apply equally to all.

Former President Hoover's subsequent letter reaffirms the sound principle of the committee report of 1950.

President Truman has twice more indicated his conviction that mail pay should mean compensation for the “cost” of carrying air mail, and this same standard has been specifically endorsed at the committee hearings in the Eighty-second Congress by the Budget Bureau, Post Office Department, and Civil Aeronautics Board.

We urge that without the cost standard there would be no definite dividing line between what constitutes mail pay, on the one hand, and what constitutes subsidy, on the other hand. Such a dividing line is essential to separation.

When S. 436 was passed by the Senate on September 19, 1951, and referred to the House Committee on Interstate and Foreign Commerce, it contained the basic inconsistency of setting cost as the basis of mail pay for our domestic and Territorial airlines, while establishing a totally different basis for our international airlines. The same general plan contained in the Senate bill for mail pay to our international airlines has been continued in the bill being reported by the majority. The majority bill provides that mail pay to our international airlines—

shall not be less than any rate paid by the United States to a foreign air carrier for similar service.

Since foreign-flag airlines charge the United States at the maximum levels permitted under the Universal Postal Union, the effect of these provisions in United States law would be to tie United States mail pay to United States airlines for the carriage of United States mails to the highest rate permitted anywhere in the world under the Universal Postal Union.

Assistant Postmaster General John M. Redding testified at our most recent hearings in the Eighty-second Congress (p. 245):

* * * UPU is an unstable rate. It is a negotiated rate. It has no relationship to cost.

The present UPU rates for letter mail, for example, are presently \$2.86 per ton-mile, which makes an extreme contrast with the present airline charges for the carriage of first-class passengers, approximately \$0.70 per ton-mile, and an even more extreme contrast with the average revenue received by the airlines for the carriage of express and freight, which is about 35 cents per ton-mile. To adopt this UPU plan would therefore be to subject the Post Office Department to unreasonably high charges by our international airlines, the result of which would be to continue the large and undesirable Post Office deficit. It was pointed out in the House hearings, page 209, by Assistant Postmaster General Redding that adoption of the language contained in the majority bill, S. 436, would cost the Post Office approximately \$29,272,000 per year more than would the cost-of-services-rendered formula contained in H. R. 508.

These figures by the Post Office Department are very closely substantiated by the Chairman of the Civil Aeronautics Board in his letter of June 2, 1950, to the chairman of the committee in which he protests that—

Universal Postal Union payments would result in hidden subsidies of \$21,927,000.

It is contended by the majority that failure to pay our airlines this UPU rate would be to discriminate against United States-flag airlines in favor of foreign-flag airlines. This argument falls when it is noted that, as pointed out in the Postmaster General's letter of February 1, 1952, to the chairman of the committee, foreign governments pay us exactly the same rate for transporting their mail as we pay to them for transporting ours. Therefore, there is not now, nor would there be under H. R. 508, any discrimination against United States-flag carriers in favor of foreign-flag carriers. In fact, the Post Office Department reports that the balance of this interchange of mail be-

tween our Government and foreign governments is distinctly in favor of the United States, to a profit of about \$7,000,000 per year, nearly all of which profit is passed along to our own United States-flag airlines. The reason for this favorable balance is that the United States carries more mail for foreign countries than foreign countries do in return for us, and the interchange, or UPU, rate being high, the result is a sizable profit for the United States Government and in particular for United States-flag carriers.

However, to tie our own mail pay to our own airlines for carrying our own mail to this extremely high UPU rate would work greatly to the disadvantage of the Post Office Department and of the taxpayers who must pay the annual postal deficit. The Postmaster General wrote that—

in one case, involving mail rates for extensive operations in South America, the Civil Aeronautics Board fixed a service rate of approximately \$0.80 per ton-mile which under S. 436 would have been \$2.86 per ton-mile.

In contrast to the majority bill, H. R. 508 provides no special rates for any airlines or group of airlines and treats them all equally under the same cost standard, as recommended in the above quotation from former President Hoover, and as recommended by the President in his 1953 budget message where he pointed out that—

separation should apply uniform standards to all carriers, international as well as domestic.

It should be noted that the arguments in favor of paying international airlines on the basis of the UPU rates, instead of on the basis of cost of services rendered, are not new arguments, but have been presented many times before to the Congress by the president of Pan American World Airways and others. These arguments have been previously rejected by the Committee on Interstate and Foreign Commerce and by the House itself. We refer specifically to the congressional debates of December 6, 1950, when it was contended by the gentleman from Arkansas, Mr. Harris, and the gentleman from California, Mr. Hinshaw, that H. R. 9184 of the Eighty-first Congress, which had been reported by the Committee on Interstate Commerce, was unsatisfactory in that it provided the same cost standard for our international carriers as was provided for our domestic and territorial carriers, whereas the proper basis for international mail pay should have been the Universal Postal Union rate.

The gentleman from Arkansas, Mr. Harris, offered as a substitute to the committee bill H. R. 9184, a measure previously introduced by the gentleman from New York, Mr. Hall, H. R. 9305 of the Eighty-first Congress, which he considered preferable in the matter of arrangements for mail pay to our international airlines. but the substitute was rejected on a division: Ayes, 38; noes, 87 (96 Congressional Record, p. 16388, December 6, 1950).

While no new arguments have been advanced in favor of the UPU plan that were not advanced before the above decision of the House, it is of value to meet such arguments as are now reiterated in the majority report of this committee.

It has been said that, in effect, the United States would be repudiating its obligations under the Universal Postal Union Convention if it did not adopt the UPU plan for mail pay to United States carriers. If that be so, then the United States has been derelict in its interna-

tional obligations for these many years, because there has never been a tie between the interchange rate agreed on by the Universal Postal Union Convention, and our own congressional standards for payment to our own carriers.

The Postmaster General stated (House hearings, p. 444):

A careful distinction has always been maintained among the member countries for the Universal Postal Union between the rates a country pays its own air carriers for the transportation of its own mails and the rates which it charges other administrations for transporting their mail. To endeavor to mix these two types of rates would result in a distortion of the service rate for international carriers.

It is therefore clear that there is no obligation in any international treaty or convention for the United States to pay to United States international air carriers an amount of mail pay in excess of the cost of services rendered, plus a fair return.

Indeed, the Postmaster General has specifically objected that adoption of the provision contained in the majority bill would subject what are properly United States governmental decisions to control by foreign governments.

Thus the Postmaster General would not actually determine the rate for transporting United States mails by United States international carriers, but foreign postal administrations would indirectly do so.

It was stated on the floor of the Senate, at the time the UPU amendment was adopted:

In the field of international aviation we followed the precedent established by Congress for fixing mail rates for the surface merchant marine.

Careful examination of the appropriate statute (U. S. C. 654 (a)) shows that mail pay to United States shipping lines is not tied by statute to the Universal Postal Union. There is no floor in the ocean-mail-pay statute but only a ceiling. In extreme contrast, the provision for international air-mail pay reported by the majority has even further weakened the Senate bill by eliminating any defined ceiling, and provided only the extremely high floor of the UPU rates.

The Assistant Postmaster General in Charge of Transportation testified before this committee:

The operation of such a tremendous transportation service, world wide in scope, by the Post Office Department, cannot be conducted in a strait-jacket. If such a strait-jacket should be imposed to the end where carriers would enjoy special consideration in their service rates * * * there would be far-reaching and adverse consequences. Such an act could defeat the very purpose this legislation seeks to achieve.

It should be noted that subsidies to our international airlines who are in competition with foreign-flag lines are in no way cut off under H. R. 508. The bill merely provides that these subsidies shall be secured by open appropriation and not by artificial raising of the mail pay.

We therefore see no reason why the House should not apply the same sound cost standard to our international airlines as to our domestic and Territorial lines.

VALUE OF THE SERVICE AS A STANDARD

The Senate bill provided that mail pay to our domestic and Territorial airlines, if not to our international airlines, should be based in the future on cost. That requirement has now been stricken by the

majority. All that is left in the way of a standard for mail pay is simply that which is considered "fair and reasonable" by the Civil Aeronautics Board.

The report of this committee in the Eighty-first Congress cogently demonstrated the dangers of deleting the cost standard:

The alternative to fixing mail rates on the basis of cost is to fix such rates on the basis of the value of the service. It appears to be the view of most authorities that to say that a rate is based on "value of service" merely means that it is based on "what the traffic will bear."

Unfortunately, "what the traffic will bear," which is the inevitable result of failure to provide a cost standard, means what the Post Office and the taxpayers can bear. It is our conviction that no such burden should be placed upon them.

Secretary of Commerce Sawyer pointed out:

Since the Government is the sole tender of air mail, value of service considerations which might conceivably be appropriate in the case of commercial traffic certainly should not be applied so far as air mail rates are concerned. The service which the Government receives should be paid for on the same basis that applies in other situations where competition is not possible; namely, cost plus a reasonable return on the investment devoted to the service.

This sound principle is contained in H. R. 508 but is taken out of S. 436 as reported by the majority.

The majority contend that they are here providing that air mail shall be paid for on the same basis as the railroad mail. It is true in theory that the majority bill provides the same adjectives as are provided in the statute governing payment to the railroads. But the Post Office has testified that in practice mail pay to the railroads is argued out and settled before the Interstate Commerce Commission on the basis of cost, and thus the practice on railroad mail is exactly the same as the practice would be for air mail under the standards provided in H. R. 508.

The officials of the Post Office Department have testified specifically:

* * * it must be clear that there is no constitutional question involved in the fixing of a standard in the proposed legislation (H. R. 508) fixing subsidy-free air mail rates of "not to exceed reasonable cost plus a fair return." This standard is urged by the Post Office Department to the end that subsidy-free air mail rates may be fixed for the airlines under principles substantially similar to those observed in fixing railway mail rates by the Interstate Commerce Commission.

In the Eighty-first Congress, the committee held, and was supported by unanimous vote of the House:

After careful consideration of this problem, this committee recommends that the determination of a compensatory rate for the transportation of mail by air should be made on the basis of cost and that the Civil Aeronautics Board be directed by express provision to use this basis.

We see no reason to change this sound principle.

STANDARDS FOR ALLOCATING RECEIPTS AND EXPENDITURES

(Committee report of 81st Cong.)

Closely related to the problem of the cost standard discussed above is the amendment to existing law, made by section 3 of the bill, which directs the Civil Aeronautics Board, on or before July 1, 1951, to prescribe standards by which air carriers, in keeping their accounts, records, and memoranda, shall allocate receipts and expenditures among four classes of service (passenger, freight, express, and

mail). In fact, the provisions which relate to the cost standard (par. (2) of the amended sec. 406 (a)) expressly provide that the cost of the mail transportation services rendered by an air carrier is to be computed in accordance with the standards so prescribed by the Board.

It is, of course, impossible to arrive at the cost of one service rendered by an air carrier, such as its mail service, without arriving at the cost of the other services it renders. Furthermore, while it is true that the final determination of the cost to any carrier of rendering mail services will have to be made in the proceeding for the fixing of the mail rate for such carrier, the making of such determination will be greatly facilitated if the carrier or carriers concerned in the proceeding have been keeping their accounts, records, and memoranda in accordance with the general principles of cost allocation which, as required by paragraph (2) of the amended section 406 (a), will be used in the proceeding. Nor is the value of requiring adherence to these general principles limited to the field of air-mail pay. It will be helpful, for example, in determining the economic soundness of a particular service, in determining the amount of subsidy needed to maintain a particular service, and for ascertaining the rates which should be charged to the public for any nonmail transportation service.

SUBSEQUENT SUPPORTING TESTIMONY

If the cost of mail services rendered is accepted as the proper standard for mail pay in the future, as it is by the great preponderance of opinion in the executive branch, among other congressional committees, and among the public, then it is essential to provide a means of getting at the cost figures.

The Hoover Commission Task Force Report on Regulatory Commissions stated:

The mail rates should no longer include any need for subsidy element, but should be based on the service rendered. They should reflect a fair allocation of costs between mail, passenger, and freight services.

H. R. 508 requires such allocation of costs to be made by the airlines under standards prescribed by the Civil Aeronautics Board, as the House committee bill of the Eighty-first Congress did. The only subsequent change has been in deference to the request of the Civil Aeronautics Board not to be confined to the four specified categories of airline traffic, viz, passengers and baggage, freight, express, and mail, as previously specified in H. R. 9184.

Therefore, H. R. 508 simply requires that the airlines should allocate costs "among the air transportation services rendered by them." This it is left to the discretion of the Civil Aeronautics Board how many categories there should be.

This change, which was in the direction of compromise or concession, has been known as the Brown amendment, offered December 7, 1950. In telegrams of December 11, 1950, to the gentlemen from Massachusetts, Mr. Kennedy and Mr. Heselton, Dr. Robert L. Johnson, the chairman of the Citizens Committee for the Hoover Report, stated:

In message to Congressman Clarence Brown we have defined what we believe to be the three essentials which any effective measure must contain and have pointed out that the proposed changes so as far as they safely may in the direction of compromise without weakening or negating the aims of the bill as a whole. Mr. Brown's recommendation on cost allocation represents absolute bare minimum, and we recommend keeping this provision as strong as possible (House committee hearings, 82d Cong., pp. 397-398).

The complete letter follows:

NEW YORK, N. Y., December 11, 1950.

Hon. CLARENCE BROWN,
House Office Building, Washington, D. C.:

Once again I want to thank you for the splendid leadership you are giving to all phases of the Commission's report. Your work has been a main reason why Federal reorganization has advanced so far against heavy odds. This knotty air subsidy problem is one more instance of your difficult role.

We hope to see prompt action by the House on air mail subsidy separation. H. R. 9184, as originally reported by the House Committee on Interstate and Foreign Commerce, is the only complete measure now before the House which would accomplish this objective.

The essential points that legislation must contain to be effective are these:

(1) Clear-cut identification of subsidies and their separation from payments for carriage of air mail.

(2) Equal treatment for all United States carriers.

(3) Adequate cost accounting and allocation provisions for fixing compensatory mail rates.

As you know, the first two objectives may easily be defeated by neglect of the third. Accounting lies at the heart of this reform.

The changes that you proposed in the cost accounting provisions are basically reasonable. However, the Civil Aeronautics Board, has, we understand, objected to the use of "secondary standards" in rate determination. We also understand that the committee draft sustains these objections and we recommend that the reference to secondary standards be eliminated. We also understand that the effective date which you proposed has been moved back to March 31, 1952. This would delay separation unduly and should be changed.

We believe otherwise that your amendments go as far in the direction of compromise as they safely may without weakening or negating the aims of the bill as a whole and thus running against the Commission's recommendation.

We trust that those Members of the House of both parties who have shown their initiative in sponsoring and fostering this measure will work together to insist that this beneficial measure be kept strong and effective in its essential provisions. Again many thanks for the leadership which you are giving the problem.

ROBERT L. JOHNSON,
Chairman, Citizens Committee for the Hoover Report.

The "absolute bare minimum" of cost allocation is embodied in H. R. 508. By contrast S. 436, as reported by the majority, contains no requirement for cost allocation.

CARRIERS ELIGIBLE FOR SUBSIDY

(House committee report of 81st Cong.)

Since, under existing law, any subsidy paid to an air carrier by the Federal Government is included in that carrier's air-mail pay, an air carrier may receive subsidy only if it holds a mail certificate.

Subsection (c) of section 406 of the Civil Aeronautics Act, as it would be amended by section 2 (a) of the bill, would permit the payment of subsidy not only to an air carrier holding a mail certificate but also to an air carrier holding any other type of certificate authorizing it to engage in air transportation. The committee feels that, with the separation of subsidy from air-mail pay made by the bill, there is no logical basis for limiting the class of air carriers eligible for subsidy to those holding mail certificates, particularly in view of the fact that subsidy determinations are to be made with respect to furthering not one national objective, but three: That is, the national defense and the commerce of the United States, as well as the postal service.

SUBSEQUENT SUPPORTING TESTIMONY

The language of the House committee bill of the Eighty-first Congress, making "any certificated air carrier" eligible to apply to the Civil Aeronautics Board for the newly separated subsidies, is in H. R. 508.

The following choice of language was placed before the Defense Department between: (a) the most restrictive—only “carriers holding a certificate authorizing transportation of mail by aircraft” (embodied in S. 436 and also in the present majority bill; a term covering only the 51 lines now receiving mail pay, all of whom are members of the Air Transport Association); (b) the middle-ground definition—“any certificated air carrier” (embodied in H. R. 508), which term covers all airlines holding a certificate of convenience and necessity, regardless of what type of traffic is authorized in that certificate, therefore includes the 51 air mail lines and also 12 airlines holding certificates for passengers and for freight but not mail; and (c) the broadest term—“any air carrier,” embodied in H. R. 4827, which includes not only the companies defined under (a) and (b) above but also some 2,000 small nonscheduled airlines.

Of these three choices, the Defense Department selected the middle one, as evidenced in this letter.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, D. C., March 28, 1952.

HON. JOHN W. HESELTON,
House of Representatives.

DEAR MR. HESELTON: Thank you for your letter of March 24, 1952, requesting the views of the Department of Defense concerning the eligibility of air carriers to apply for subsidies.

The Department of Defense would prefer that “any certificated air carrier” be made eligible to apply for subsidy. If mail pay is to have an actual service or use basis there would seem to be no reason to relate separate subsidy payments to the carrying of mail.

The Department of Defense has a twofold interest in defense requirements concerning civil aircraft. These requirements are for passenger and light cargo aircraft and heavy cargo transports. It is the opinion of the Department of Defense that it would be inconsistent to deny to the Government the possibility, if desirable in the national interest, of subsidizing operators of heavy freight aircraft requiring little conversion for military use. The requirements of passenger and freight traffic are both important to the military program.

It is a pleasure to be of service to you, and I hope you will not hesitate to call on me if I may be of further assistance to you.

Sincerely yours,

R. L. GILPATRICK.

The same answer, preference for any “certificated air carriers,” had also been given by the Postmaster General to the gentleman from Massachusetts, Mr. Kennedy.

OFFICE OF THE POSTMASTER GENERAL,
Washington 25, D. C., December 12, 1950.

HON. JOHN F. KENNEDY,
House of Representatives.

DEAR CONGRESSMAN: This is in reply to your telegram of December 10, 1950, concerning H. R. 9184.

The Department should not be required to tender mail to air carriers certificated for purposes other than the needs of the postal service. The present language of H. R. 9184, page 4, line 12, “certificated air carriers,” would protect the Post Office Department from being required to tender mail and pay for services not actually required.

The Civil Aeronautics Board would be required to determine whether such nonmail carriers were entitled to subsidy support and to pay any subsidy from appropriation for that purpose, without involving the Post Office Department.

Sincerely yours,

J. M. DONALDSON, *Postmaster General.*

Therefore, while the language in H. R. 508 conforms with the logic in the House committee report of the Eighty-first Congress, with the

stated preference of the Defense Department and the Postmaster General, S. 436 as reported by the majority is in conflict with all three authorities.

OTHER DEFECTS OF S. 436 AS REPORTED BY THE MAJORITY, IN
COMPARISON TO H. R. 508

CONTRACTS

S. 436 empowers the Civil Aeronautics Board to grant several-year-subsidy contracts to the recipient airlines. This provision conflicts directly with the recommendation of the Hoover Commission on Organization of the Executive Branch that:

Losses and subsidies should be made clear each fiscal year and passed upon by the Congress (Report on Federal Business Enterprises).

The contract provision in S. 436 circumvents annual congressional review of the subsidies, diminishing congressional control over the amount of the subsidies granted to private airlines and the uses to which they will be put. Such a procedure would not cure, but add to what the House Post Office and Civil Service Committee described as—

the basic objection which is that, under the present situation, we have an administrative board (meaning the Civil Aeronautics Board) allocating public funds through which basic public policies are established without action directly by the Congress.³

In no uncertain terms, the Bureau of the Budget recommended:

Since subsidy contracts do not appear necessary in the field of aviation, and since they may potentially involve the Government in substantial financial commitments, in excess of actual future needs, this Bureau urges deletion of this provision of S. 436 (hearings, p. 44).

This recommendation was not carried out in the majority reporting of S. 436. In contrast, H. R. 508 does not contain this objectionable contract provision and leaves future Congresses unfettered in their decisions to raise or lower airline subsidies.

RECOVERY

S. 436 gives the appearance of providing a recovery clause under which the Government would recapture any excess profits from carriers holding these subsidy contracts. Such recovery is illusory, however, because the majority bill provides a base period for recovery no longer than the period during which subsidies are to be paid. Experience in the maritime field⁴ shows the necessity of having recovery provision on a long-term basis, longer if necessary than the period during which subsidies are being paid. The reason for this is that subsidy money to an airline might not show results in terms of large profits until several years after the payment of the subsidies, after which it would no longer be possible, under the language of the majority bill, for any recovery to be made for the taxpayers. In addition, the majority bill provides for such liberal deductions in computing profits on paper, that it is unlikely that any actual recovery would be achieved for the taxpayers and it would develop that there would be little possibility of return.

³ H. Rept. 1958, 80th Cong., by Mr. Rees from the Committee on Post Office and Civil Service.

⁴ H. Doc. 213, 82d Cong.

STANDARDS FOR SUBSIDIES

The President in his 1951 budget message recommended that—the standard by which subsidy practices are determined under existing legislation may itself merit review.

No such review has been made in the subsidy provision being reported by the majority, and those provisions combined with the restriction on eligibility to apply for the subsidy and combined with the contracts provision might bring about the effect of reenactment in worse degree of the present “need” section of the Civil Aeronautics Act, which is considered such a detriment to efficiency and a deterrent to defense.

While the majority bill has at least deleted the vague term “economic development” from S. 436 as a purpose for subsidy, the majority bill is still insufficient in its emphasis on “national defense,” which, by contrast, is the primary test for any subsidy under H. R. 508.

RESTRICTIONS ON THE MOVEMENT OF MAIL

The Postmaster General stated in his letter of February 1, 1952, to the chairman of the committee that: “Other provisions of S. 436” (and we may remark that these criticisms are still valid in S. 436 as reported by the majority of the committee) “would have an adverse effect on the postal service and may contribute materially to hidden subsidy. * * * They go far to make the air postal service the captive customer of the air carriers.” First among these restrictions is the provision in S. 436 as reported by the majority, inserted in two places (p. 2, line 16 and p. 5, line 4) that the Postmaster General shall not “withhold mail from an air carrier because the rate for the transportation of mail payable to such carrier may be higher than the rate payable to a competing air carrier.” The effect of this unfortunate provision is to force the Post Office to make use of high-cost airlines, even though there would be no saving in time of delivery of the mail to the addressee.

In addition, the Postmaster General noted, and his contention is still true with respect to S. 436 as reported by the majority, that—

* * * the minimum weight of 15 pounds proposed in the Senate bill would result in substantial payments for fictitious loads in excess of the actual mail load carried.

All these points are in our opinion sufficient to justify the conclusion of the Postmaster General that “true separation of subsidy from service mail rates, which I have consistently advocated, can be achieved but not under the proposals of the Senate.” In contrast the Postmaster General has endorsed, with only minor changes, “S. 436 as originally introduced,” which is word for word H. R. 508.

VIEWS OF THE CIVIL AERONAUTICS BOARD, THE POST OFFICE DEPARTMENT, AND THE BUREAU OF THE BUDGET

The following letters, expressing views with respect to the bill reported by the majority of the committee and with respect to the basic principles contained in H. R. 508, have been received from the Chairman of the Civil Aeronautics Board, the Postmaster General, and the Director of the Bureau of the Budget.

CIVIL AERONAUTICS BOARD,
Washington 25, July 2, 1952.

HON. JOHN W. HESELTON,
House of Representatives, Washington 25, D. C.

DEAR MR. HESELTON: This is in reply to your letter of June 28, 1952, in which you (1) inquire whether the Board's objections to S. 436 as passed by the Senate apply to the substitute bill recently reported by the majority of your committee; and (2) request the Board to state again whether it is in favor of H. R. 508.

In view of the very short time that we have to reply and your awareness of the great amount of detailed testimony and materials that the Board has furnished in the past couple of years with respect to various separation bills, including H. R. 508, I assume that you expect a brief statement dealing only with basic points.

1. The significant objective of separation legislation is to identify the amount of subsidy air carriers receive. This identification must be made as definitely and as fairly as is possible under the present state of development of the accounting and analytical sciences if the Government and the public are to place any trust in the result. Anything less than that will not quiet the demand that the subsidy be out in the open where it can be examined and evaluated.

2. The Board reiterates its position that the fairest and most effective basis for separation in the domestic, overseas, and foreign fields is the cost to the carriers of furnishing the mail service plus a reasonable return on the investment allocable to that service.

3. With respect to foreign mail transportation, neither S. 436 nor the substitute bill reported by the majority of your committee provides for this effective basis for separation. Both of them contain a provision the practical effect of which is to require that the UPU rates be paid as the minimum compensatory rate for foreign mail transportation. Since the UPU rates are rates arrived at by bargaining among nations and are not fixed on the basis of recognized public utility rate-making principles, their employment as a standard for separation lacks the necessary validity to afford any one assurance that substantial subsidy does not remain hidden in the compensatory rate so fixed. The Board objects to this aspect of both S. 436 and the substitute bill.

4. With respect to domestic and overseas mail transportation, S. 436 contains the standard which the Board endorses, that the compensatory rates shall be based on costs fairly assigned and apportioned. The Board objects to the substitute bill in that even with respect to domestic and overseas transportation it does not provide that the separation shall be made on the basis of costs plus a reasonable return, thus inviting the use of the "value of service" concept in fixing compensatory rates in a field in which the government is the only purchaser of the service, with virtually unlimited ability to pay. Furthermore, both S. 436 and the substitute bill contain a 15-pound minimum provision with which we do not agree and which will tend to give a windfall in view of the practical necessity of fixing rates on a system basis rather than on a station-to-station basis.

5. H. R. 508 employs a cost standard for separation in domestic, overseas and foreign mail transportation, and in so doing is in accord with what the Board believes to be essential if any meaningful identification of the amount of subsidy is to be made. Such identification goes to the very heart of any such separation legislation. However, the Board objects to the specific cost standard as stated in H. R. 508 and believes the proper cost standard is that set forth in section 406 (a) (2) of S. 436.

6. The Board is not in accord with the provisions of H. R. 508 insofar as subsidy is extended to all certificated carriers. The purpose of separation legislation should be to separate the compensatory part from the subsidy part—not to extend at this late date in the development of air transportation subsidy to carriers who did not enter upon their programs with any expectation of receiving it. The Board feels that such an extension of eligibility for subsidy will tend to increase the government's bill without corresponding benefits to the national interest.

I wish to emphasize once more that I have confined my comments to the basic points. The Board is on record in detail with respect to some of the less important provisions of these and other bills.

Sincerely yours,

DONALD W. NYROP, *Chairman.*

OFFICE OF THE POSTMASTER GENERAL,
Washington 25, D. C., July 1, 1952.

HON. JOHN W. HESELTON,
House of Representatives.

DEAR CONGRESSMAN HESELTON: Your letter of June 28, 1952, requesting that you be advised as to whether the objections stated from time to time in my previous correspondence, relating to S. 436, still apply in the case of the bill reported by the majority of your committee and whether the basic principles of H. R. 508 are satisfactory, has been received.

The committee bill, transmitted with your letter, retains most of the objectionable features set forth in my report of February 1, 1952, to the chairman of the committee. The reasons for my objections are fully stated in that report and were presented to your committee in detail by Assistant Postmaster General Redding and Associate Solicitor Wiprud in their testimony. Among the more objectionable are the provisions in the committee bill which require that a "subsidy-free" mail rate for United States international air carriers be fixed, for all practical purposes, at the maximum level established by the Universal Postal Union, and that the Postmaster General tender mail to a high-rate carrier though there be a competing carrier offering identical services at a lower rate. Such provisions will render substantially ineffective any effort to bring about a complete separation of all subsidy from mail payments to air carriers.

I would like to emphasize again the importance of avoiding the establishment of nonsubsidy mail rates for United States international air carriers based upon Universal Postal Union rates. The latter are negotiated rates, having no relationship to the cost of providing the service. They are established by the Postal Congress to serve only as a basis for charges that one country may exact from another for the use of its air carrier. As such, they have been maintained at a relatively high level. This has worked to the advantage of United States air carriers, since the service they perform for foreign countries and the total compensation received therefrom is approximately five times greater than in the case of foreign carriers performing service for the United States. If this high rate, which now applies to only 4 percent of United States mail, were established by law as the minimum for the remaining 96 percent, total international mail payments to United States air carriers would be approximately three times greater than compensation under mail rates based on cost, plus a fair profit. Moreover, even if present UPU rates were reduced as much as 50 percent, total payments would still be much greater than under rates based on cost, plus a fair profit.

In this relation, it should be noted that there is a provision in existing law and in the committee bill which prohibits the Postmaster General from paying more to foreign air carriers than foreign countries pay United States air carriers. This is the practice today and thus our air carriers are assured of nondiscriminatory treatment in these matters in relation to foreign air carriers. This fact, together with the provision for adequate subsidy to United States air carriers, in addition to mail payments, insures equitable treatment to such carriers in transporting United States international mail.

Thus, it must be clear that the minimum provision of the committee bill, applicable to international mail rates, would permit unduly high subsidies to remain in the mail pay and thereby defeat the purpose of this legislation, which is to completely and effectively eliminate all subsidy from mail payments to air carriers.

As stated in the testimony of Assistant Postmaster General Redding, the provisions of H. R. 508, with certain modifications outlined by him, would be satisfactory.

Sincerely yours,

J. M. DONALDSON,
Postmaster General.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., July 1, 1952.

HON. JOHN W. HESELTON,
House of Representatives, Washington 25, D. C.

MY DEAR MR. HESELTON: This is in reply to your letter of June 28, 1952, requesting comments of this Bureau on S. 436, a bill to separate airline subsidy from mail pay, as recently reported by the House Committee on Interstate and Foreign Commerce. In particular, your letter asks whether objections which

were noted in this Bureau's letter of April 7, 1952, commenting on the version of this bill passed by the Senate, would apply to the bill reported by the House committee.

The bill reported by the House committee omits one of the provisions which was questioned in our previous letter; namely, the section establishing specific compensatory rates for initial application to domestic air-mail service. Unfortunately, however, the reported bill is still subject to those objections which have been of principal concern to this Bureau and other executive agencies. In particular, we strongly oppose that provision of the bill which requires in effect that the Universal Postal Union rate scale be used as the basis for establishing the minimum mail rates to be paid by this Government to United States-flag carriers engaged in international air mail transportation. The reasons for our opposition to this provision were set forth in our letter of April 7, and in reports and testimony presented by other executive agencies, including the Civil Aeronautics Board, the Post Office Department, and the Department of Commerce. As pointed out in our previous letter, the rate levels established by the UPU are determined by processes of international negotiation, and do not bear any close relationship to rates that would result from normal regulatory proceedings. The UPU rates now in existence appear to exceed a reasonable cost level for providing mail service, and in fact exceed the actual rates (including subsidy) that have been established by the CAB for some of our international airlines. To classify such UPU rates as "compensatory" would result in a continued payment of subsidy under the guise of service rates. Furthermore, in some cases it would actually result in larger payments to individual airlines than would otherwise be required to meet the combination of their subsidy need and their cost of handling mail.

The bill reported by the House committee also retains, in modified form, the provisions of the Senate bill providing for multiyear contracts for the payment of subsidy. For reasons stated in our previous letter, this Bureau questions the suitability of such contracts in the field of airline subsidy. We recognize that subsidy contracts are now provided in the maritime field. However, as we previously pointed out, there are significant differences between the merchant marine industry and the airline industry, which significantly limit the suitability of subsidy contracts in the latter field. As we also pointed out in our earlier letter, it is not clear how the obligations that might be incurred under these contracts would relate to congressional action on subsidy appropriations for the CAB. It should be noted that the reported bill goes somewhat further than the Senate bill in the direction of establishing a contractual pattern for subsidy payments, in that it provides no other means of subsidizing the airlines, whereas the Senate version of the bill left the use of contracts to the discretion of the CAB. It should also be noted that, as modified in the reported bill, the provision for subsidy recapture contains several new features, the intended application of which is not clear to the Bureau at this time. Accordingly, the questions raised by this Bureau with respect to the Senate provisions would be even more applicable to the bill reported by the House committee.

Our previous letter also called attention to certain questionable features of the general subsidy standards contained in the Senate version of S. 436. In part, these have been corrected in the bill reported by the House committee. However, there still remain, in our opinion, certain defects in the subsidy provisions. For example, the reported bill does not contain a provision, such as that contained in various other pending bills, specifically authorizing the establishment of subsidy rates by classes of carriers. Nor does it include language, similar to that now contained in the Civil Aeronautics Act, expressly directing the Board to take account of all other revenues of air carriers in establishing rates for subsidy payment.

The reported bill also retains a number of features which were opposed previously by other agencies, particularly by the Post Office Department. For example, the bill retains the provision establishing an arbitrary minimum of 15 pounds, to be treated as an assumed mail dispatch to every point served, for purposes of computing mail payment. It is assumed that the Post Office Department will be indicating to you independently its present comments on this and other provisions to which it previously objected.

In addition to the above points, which have been substantially retained from the Senate version of the bill, the bill reported by the House committee contains an important change which is regarded as undesirable by this Bureau. I refer to the omission of a cost standard as the basis for establishing compensatory mail rates. Such a cost standard was included in the Senate version of S. 436. As indicated by Senate Report No. 629 of the present Congress, the Senate committee gave

extensive consideration to the various alternative standards for establishing compensatory mail rates, and reached the conclusion that a standard related to the cost of handling mail would be the best means of assuring that rates would be set at reasonable levels. A similar cost standard was included in H. R. 9184, the bill passed by the House during the Eighty-first Congress. As indicated by House Report No. 3041, Eighty-first Congress, the House Committee on Interstate and Foreign Commerce at that time reached much the same conclusion as was recently reached by the Senate committee, in terms of the desirability of basing compensatory mail rates on the cost of handling mail. In view of this background, it seems especially unfortunate that the cost standard has been omitted from the bill reported by the House committee.

Your letter asks whether H. R. 508, or its basic principles, would be in accord with the program of the President. This Bureau transmitted, with its letter of April 7, a suggested revision of S. 436, which incorporated the combined views of the executive agencies primarily interested in this subject. Our letter pointed out that the bill which we recommended would be similar in basic principle to H. R. 508, as well as to the bill passed by the House during the Eighty-first Congress (H. R. 9184). The main substantive difference between H. R. 508 and the bill recommended by this Bureau is that H. R. 508 would broaden subsidy eligibility to cover all certificated air carriers, rather than limiting such coverage to those carriers which are already eligible for subsidy. Except for this point, the general principles of H. R. 508 would be in accord with the program of the President. This Bureau would, however, continue to prefer enactment of legislation containing the detailed provisions of the bill which we submitted to the House committee on April 7, 1952.

Sincerely your,

F. J. LAWTON, *Director*.

CONCLUSION

In conclusion, we believe that S. 436, as reported by the majority, is an air mail subsidy separation bill in title only.

On the other hand, favorable House action on H. R. 508 would place upon the statute books another valuable reform recommended by the Hoover Commission, and in accordance with the program of the President and the sound principles of seven congressional committees under the chairmanship of men of both parties. We intend to offer it as a substitute and urge our colleagues in the House to support it.

JOHN W. HESELTON,
CHAS. A. WOLVERTON,
ARTHUR G. KLEIN,
WILLIAM T. GRANAHAN,
LOUIS B. HELLER,
MORGAN M. MOULDER,

By G. D.

APPENDIX TO MINORITY VIEWS

For the convenience of the Members, this appendix contains a section-by-section analysis of the provisions of H. R. 508, Eighty-second Congress, together with an analysis of the changes in existing law which would be made by those provisions. For the purposes of this appendix, the effective dates are represented not as they were set forth in H. R. 508 (which was introduced on January 3, 1951) but as they are contained in H. R. 8356 of the Eighty-second Congress (which is the same as H. R. 508 except for the applicable dates).

EXPLANATION BY SECTIONS OF SUBSTITUTE INTENDED TO BE OFFERED

Section 1

Section 1 of H. R. 8356 (which is the same as H. R. 508 except for effective dates) contains the short title for the legislation.

Section 2

Section 2 (a) of the bill substitutes new provisions for subsections (a), (b), and (c) of section 406 of the Civil Aeronautics Act of 1938.

Paragraph (1) of the amended section 406 (a) directs the Civil Aeronautics Board from time to time to determine and fix fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful for such transportation, and the services connected with such transportation. The rates so determined and fixed shall be effective from such date as the Board shall determine to be proper, but shall not be effective for any period prior to the institution of the proceeding under section 406 (a) in which they are determined and fixed. The Board has power under this paragraph (1) to prescribe the method or methods for ascertaining such rates of compensation, and may fix different rates for different air carriers, for different classes of air carriers, or for different classes of service, or may fix different rates on the basis of any other reasonable classification of carriers, services, routes and route segments, or combination thereof. The Civil Aeronautics Board shall publish such rates, and they shall be paid by the Postmaster General from appropriations for the transportation of mail by aircraft.

Paragraph (2) of the amended section 406 (a) provides that such rates shall in no event exceed the reasonable and necessary cost to the air carrier of the mail transportation services rendered or the mail transportation services to be rendered, including a fair return. Such reasonable and necessary cost to the air carrier is to be ascertained with reference to reasonable and necessary cost under honest, economical, and efficient management.

The phrase "including a fair return," as used in paragraph (2) of the amended section 406 (a), refers to a fair return to the air carrier on its investment, but only so much of that investment as is properly allocable to facilities used or useful for rendering mail transportation services.

Paragraph (3) of the amended section 406 (a) authorizes the Board to prescribe temporary mail rates. The orders prescribing such rates may be issued with or without hearing. However, the paragraph provides that such temporary rates may be prescribed only pending the determination of final rates, and further, that when final rates are fixed they shall supersede the temporary rates for any period during which the temporary rates were in effect.

Paragraph (1) of section 406 (b) of the Civil Aeronautics Act of 1938, as it would be amended by subsection (a) of section 2 of the bill, provides that any petition to the Civil Aeronautics Board to fix compensatory mail rates must state and support in detail the rates the petitioner recommends as being fair and reasonable.

Paragraph (2) of the amended section 406 (b) requires the Postmaster General to introduce into the record in each compensatory mail rate proceeding a comprehensive statement of all mail transportation services which will be required of the air carrier, together with

any other information which the Postmaster General has which he deems, or which the Board deems, to be material to the rate-making proceeding.

Paragraph (3) of the amended section 406 (b) is a procedural provision which makes it clear that, in any proceeding to set a compensatory rate for the transportation of mail by air which is commenced by way of petition, the burden of proof will be on the petitioner.

Paragraph (1) of subsection (c) of section 406 of the Civil Aeronautics Act of 1938, as it would be amended by subsection (a) of section 2 of the bill, empowers the Civil Aeronautics Board to make subsidy payments to any air carrier holding a certificate authorizing it to engage in air transportation. The amount of such subsidy would be that amount which the Board determines to be essential (when taken together with all the other actual and potential revenues of the carrier) to enable the carrier, under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the national defense, the commerce of the United States, or the postal service.

Paragraph (1) of the amended section 406 (c) gives the Board power to make such subsidy payments on the basis of any reasonable classification of air carriers, services, routes and route segments, or any combination thereof, in addition to the power to make subsidy payments on the basis of determinations relating solely to a particular air carrier. Subsidy payments would be for such periods as the Board may prescribe, but no subsidy payment may be made for any period prior to the institution of the subsidy proceeding. Finally, paragraph (1) of the amended section 406 (c) provides that the subsidy payments shall be made by the Board out of sums appropriated to the Board for the making of such payments.

Paragraph (2) of the amended section 406 (c) provides that each petition under paragraph (1) for the fixing of a subsidy will have to state and support in detail the amount which the petitioner feels he is entitled to receive as subsidy. Furthermore, without regard to whether the subsidy proceeding began by the filing of a petition or whether it began upon the initiative of the Board, the air carrier would bear the burden of establishing the fact that a payment to such carrier is required for its operations under the standard set forth in the amended section 406 (c), and also the burden of establishing the amount of the payment so required. In any subsidy proceeding, the fact that an air carrier may have been granted a certificate of public convenience and necessity authorizing it to offer certain services would not be held and considered conclusive of the question of whether or not such services are sufficiently required in the national interest to justify the amount of subsidy that would be required to keep such services in operation.

Paragraph (3) of the amended section 406 (c) gives the Board the authority, with or without hearing but upon a showing by the air carrier or carriers concerned of essentiality and urgency, to make temporary subsidy payments pending the determination of final subsidy payments. This paragraph provides that any temporary subsidy payments made under it shall not be considered final, and that when final subsidy payments are determined they shall cover any period with respect to which a temporary subsidy payment was made and shall supersede such temporary subsidy payment for such period.

Subsection (b) of section 2 of the bill makes provision for the taking effect of the amendment to subsections (a), (b), and (c) of section 406 of the Civil Aeronautics Act of 1938 made by subsection (a) of section 2 of the bill. It provides that the amended subsections shall apply only with respect to the transportation of mail on or after October 1, 1952, and only with respect to operations in air transportation (and subsidy payments with respect thereto) occurring on or after such date.

That is to say, with respect to mail carried prior to October 1, 1952, the provisions of existing law (which do not provide for separation between mail rates and subsidies) will govern and will continue in effect. However, with respect to mail carried on and after October 1, 1952, and with respect to operations in air transportation occurring on and after such date, the provisions of section 406 (a), (b), and (c), as amended by section 2 (a) of the bill, will be in effect from the enactment of this legislation. Thus, the Board will have authority at any time after the enactment of this legislation to conduct proceedings to determine the mail rates to be paid with respect to mail transportation performed on and after October 1, 1952, and the subsidies to be paid with respect to operations in air transportation occurring on and after such date, and to issue orders providing for the rates and subsidies to be so paid.

Section 3

Section 3 of the bill would amend section 407 (d) of the Civil Aeronautics Act of 1938 by adding a new paragraph (2) providing that the Civil Aeronautics Board shall prescribe standards by which air carriers, in keeping their accounts, records, and memoranda, shall allocate all receipts from, and all expenditures for, the air transportation services which they render. Such standards shall be prescribed on or before September 30, 1952, but only after notice and hearing.

The amendment further makes it unlawful after October 1, 1952, for any carrier to allocate its receipts or expenditures, in keeping any account, record, or memorandum, except in a manner which conforms to the standards for allocation prescribed by the Board. The amendment would, however, permit an air carrier to make a different allocation of receipts and expenditures in any additional account, record, or memorandum kept pursuant to the proviso at the end of paragraph (1) of the amended section 407 (d). Under that proviso, an air carrier is permitted to keep accounts, records, and memoranda in addition to the accounts, records, and memoranda prescribed or approved by the Board, but only on condition (1) that the additional accounts, records, and memoranda do not impair the integrity of the accounts, records, and memoranda prescribed or approved by the Board, and (2) that they do not constitute an undue financial burden on the carrier.

Section 4

Section 4 of the bill would amend section 206 of the Civil Aeronautics Act of 1938, so as to provide that in its annual reports to the Congress the Civil Aeronautics Board shall include data relating to compensatory air-mail payments and to subsidy payments to air carriers. Such additional information to be included in the annual report shall contain a separate analysis of the bases for each compensatory air-mail payment, and a similar analysis for each subsidy payment to an air carrier.

Section 5

Subsection (a) of section 5 of the bill would authorize the Civil Aeronautics Board to make studies in connection with any provision of the bill. This is intended primarily to permit the making of such studies as may be necessary to bring about, on October 1, 1952, the separation of subsidy from air-mail pay. The Board may make such studies directly or may enter into contracts or arrangements under which such studies would be carried on by persons or organizations designated therefor jointly by the Chairman of the Civil Aeronautics Board and by the chairmen of the Committees on Interstate and Foreign Commerce of the House and Senate.

Subsection (b) of section 5 of the bill would direct the Civil Aeronautics Board to report on or before January 1, 1953, to the Congress with respect to the amount the Board estimates will be required for compensatory air-mail pay, and with respect to the amount it estimates will be required for subsidy payments to air carriers, for the fiscal year ending June 30, 1954. The report will include a study of potential revenues of the air carriers from air traffic, and of potential economies in airline costs, together with any other factors which are pertinent to the development of the air transportation industry in the national interest but with the least possible expenditures by the Federal Government.

Subsection (c) of section 5 of the bill authorizes the appropriation of such sums as may be necessary to carry out the studies, and to prepare the report, covered by subsections (a) and (b) of section 5 of the bill. The sums so appropriated shall not exceed \$300,000 in the aggregate.

CHANGES IN EXISTING LAW

Changes in existing law proposed to be made by H. R. 8356 (which is the same as H. R. 508 except for the effective dates) are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CIVIL AERONAUTICS ACT OF 1938, AS AMENDED

RATES FOR TRANSPORTATION OF MAIL AND SUBSIDY FOR ESSENTIAL AIRCRAFT OPERATION

Authority To Fix Compensatory Rates

SEC. 406. (a) (1) The [Authority] *Civil Aeronautics Board* is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, [(1)] to [fix and determine] *determine and fix* from time to time, after notice and hearing, [the] fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such [date] *date, after the institution of the proceeding under this subsection*, as it shall determine to be proper; [(2)] to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation [for each air carrier or class of air carriers]; and [(3)] to publish the same; and the rates so fixed and determined *to fix different rates for different air carriers or classes of air carriers, or different classes of service, or on the basis of any other reasonable classification of carriers, services, routes and route segments, or any combination thereof. The rates*

so determined and fixed shall be published by the Board and shall be paid by the Postmaster General from appropriations for the transportation of mail by aircraft.

(2) The rates determined and fixed under paragraph (1) of this subsection shall in no event exceed the reasonable and necessary cost to the air carrier, under honest, economical, and efficient management, of the mail transportation services rendered or to be rendered, including a fair return.

(3) The Board is authorized to issue orders, with or without hearing, prescribing temporary rates for the transportation of mail pending determination of final rates. Such temporary rates shall not be considered final for any period and shall be superseded by the final rates fixed for the periods during which the temporary rates were in effect.

【Rate-Making Elements

【(b) In fixing and determining fair and reasonable rates of compensation under this section, the Authority, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Authority shall take into consideration, among other factors, the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

【Statement of Postmaster General and Carrier

【(c) Any petition for the fixing of fair and reasonable rates of compensation under this section shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under this section a comprehensive statement of all service to be required of the air carrier and such other information in his possession as may be deemed by the Authority to be material to the inquiry.】

Recommendations as to Rates

(b) (1) Any petition for the fixing of rates under subsection (a) of this section shall state and support in detail the rates recommended by the petitioner as being fair and reasonable.

(2) The Postmaster General shall introduce as a part of the record in all proceedings under subsection (a) of this section a comprehensive statement of all service to be required of the air carrier and such other information in his possession as he deems, or as may be deemed by the Board, to be material to the inquiry.

(3) The burden of proof in any proceeding under subsection (a) of this section which is initiated by petition shall be with the petitioner.

Subsidy for Essential Aircraft Operation

(c) (1) The Board is empowered, upon its own initiative, or upon the petition of the air carriers, to make, after notice and hearing, subsidy payments to a certificated air carrier in amounts determined by the Board to be essential (when taken together with all the other actual and potential revenues of the air carrier) to enable the air carrier under honest, economical, and efficient management to maintain and continue the development of air transportation to the extent and of the character and quality required for the national defense, the commerce of the United States, or the postal service. The Board is empowered to make subsidy payments for individual air carriers or classes of air carriers, or on the basis of any other reasonable classification of carriers, services, routes and route segments, or any combination thereof, and to prescribe the method or methods of such payments and duration of period for which applicable. The Board may make such subsidy payments effective from such date, after the institution of the proceeding under this subsection, as it shall determine to be proper. Payments under this subsection shall be made by the Board out of sums appropriated to the Board for such purpose.

(2) Every petition for the fixing of a subsidy shall state and support in detail the amount the petitioner believes that he is entitled to under the subsidy provisions of this section and the carrier shall have the burden of establishing the amount of subsidy payment, if any, which is required for its operations under the standard established by this Act. The fact that an air carrier has been granted a certificate of public convenience and necessity authorizing it to offer certain services shall not be deemed conclusive of the issue as to whether such services are sufficiently required in the interest of the national defense, the commerce of the United States, or the postal service, to justify the amount of subsidy that would be required to keep such services in operation.

(3) The Board is authorized, with or without hearing but upon a showing by the air carrier or carriers concerned of essentiality and urgency, to make temporary subsidy payments pending the determination of final subsidy payments. Temporary subsidy payments so made shall not be considered final, and when final subsidy payments are determined, they shall cover any period with respect to which a temporary subsidy payment was made and shall supersede such temporary payment for such period.

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SEC. 407. * * *

Form of Accounts

(d) (1) The Authority shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Authority: *Provided*, That any air carrier may keep additional accounts, records, or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Authority and do not constitute an undue financial burden on such air carrier.

(2) On or before September 30, 1952, and from time to time thereafter, the Civil Aeronautics Board shall, after notice and hearing, prescribe standards by which air carriers, in keeping their accounts, records, and memoranda, shall allocate receipts from, and expenditures for, the air transportation services rendered by them. From and after October 1, 1952, it shall be unlawful for any air carrier, in keeping any account, record, or memorandum (other than any additional account, record, or memorandum kept pursuant to the proviso of paragraph (1) of this subsection), to allocate any receipt from, or expenditure for, any air transportation service it renders in any manner other than a manner which conforms to the standards prescribed pursuant to this paragraph.

* * * * *

ANNUAL REPORT

SEC. 206. The Authority shall make an annual report to the Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain in addition to a report of the work performed under this Act, such information and data collected by the Authority, the Administrator, and the Air Safety Board as may be considered of value in the determination of questions connected with the development and regulation of civil aeronautics, *including data relative to the mail payments and subsidy payments, both in the aggregate and on an individual basis, made under this Act with a separate analysis of the bases upon which each such mail payment and each such subsidy payment was provided*, together with such recommendations as to additional legislation relating thereto as the Authority may deem necessary. The Authority may also transmit recommendations as to such additional legislation more frequently.

(NOTE.—In the foregoing material showing the changes in existing law made by the bill, as introduced, existing law is shown in a number of instances as containing references to the "Authority," that is to the Civil Aeronautics Authority. Although those parts of the Civil Aeronautics Act of 1938 set forth in the material have never been expressly amended, their operation has been affected by section 7 (b) of the Reorganization Plan No. IV of 1940, which provided that after such plan went into effect, the Civil Aeronautics Authority was to be known as the Civil Aeronautics Board.)

